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DIGEST of the LAW *10. 2. f*

CONCERNING *511. d. 22*
2

LIBELS:

CONTAINING

All the RESOLUTIONS in the Books on the Subject,

AND MANY

MANUSCRIPT CASES.

The whole illustrated with occasional

OBSERVATIONS.

There is not a more certain Mark of an ill-designing or impotent
Administration, than Attempts to restrain the Liberty of Speaking
or Writing. *2 Macaul. Hist. Engl. 61.*

By a GENTLEMAN of the *Inner-Temple*.

LONDON:

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the *Royal Exchange*; and B. TOVEY, in *Westminster-Hall*. MDCCLXV.

DIGEST of the LAW

CONCERNING

LIBEL

CONTAINING

ALL DECISIONS in the Books on the Subject

AND MANY



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THE PREFACE.

THE Law of *England* acknowledges no Superior, for "it (a) is the greatest Inheritance the King has, he himself and all his Subjects being governed thereby; and if there was no Law, there would be no King nor Inheritance." *Year (b) Book 19 Hen. 6. 63.*

It is admirable to observe with what a true and honest Courage that grave Chief Justice Sir *Edward Coke* answered King *James* the First, when that King was pleased to say, It was Treason to affirm, that the King was under the Law: The Chief Justice answered him with the Words of an ancient Judge, and

Law of *England* acknowledges no Superior.

Lord Chief Justice *Coke's* Answer to King *James* the First on his saying it was Treason to affirm the King was under the Law.

(a) *La LEY est le plus haut Inheritance que l' Roy ad: car par la LEY il mem' & tous ses Subjettz sont rules, & si l' LEY ne fuit, nul Roy, ny nul Inheritance ser'.* 19 H. 6. 63.

(b) The *Year Books* are held the best Authorities in the Law, as appears from the following Account of them: "The Wisdom of our former Kings appointed four Reporters, to commit to Writing, and truly to deliver, as well the Words spoken, as the Judgments and Reasons thereupon given in our Courts at *Westminster*, who were chosen Men, and conferred all together at the making and setting forth any Book of Reports, which Book in respect of the Number of the Reporters, and their approved Learning, carried great Credit, as it justly deserved." *Plowd. Prel. to Com. Co. Pref. to 3 Rep.* Again, "Hence it is, that all our *Year Books* of Law Reports, from the Beginning of the Reign of King *Edward III.* until the latter End of King *Henry VIII.* received their Being, and continued their Repute with us to this present." *Pref. to Cro. Car.*

The P R E F A C E.

Author of our Law, (that is, out of (a) *Bracton*) That the King was *sub Deo & (a) Lege*; and (b) *Fleta*, another of the ancient Authors in our Science, useth Words to the same Effect. This Doctrine differed from some of the (c) *Motto's* in the Serjeants Rings about that Time. See *Atk. Power, &c. of Parliament*. 16.

Import of the
Coronation
Oath.

The Coronation Oath importeth on the Part of the King, a publick *solemn Recognition of the Fundamental Rights of the People*; and concludeth with an Engagement under the *highest of all Sanctions*, that he will maintain and defend *those Rights*, and to the utmost of his Power *make the Laws of the Realm the Rule and Measure of his Conduct*. *Fost. Cr. Law*. 189. See *Sid. Gov.* 91, 92. *chap. 2. sect. 7.*

Judge's Oath.

The Judges also are bound by Oath to determine according to the known Laws and antient Customs of the Realm; and their Rule herein must be the judicial Decisions and Resolutions of great Numbers of learned, wise and upright Judges, upon variety of particular Facts and Cases, and not their own arbitrary Will and Pleasure, or that of their Princes. *Bac. Abr.* 555.

Lord Chief
Justice Coke's
Definition of
a Judge's Dis-
cretion.

The Lord Chief Justice *Coke* says, it is very necessary that the Law and Discretion should be concomitant, and the one to be an Accident inseparable to the other, so as neither Law without Discretion, lest it

(a) *Quia Lex facit Regem. Bract. Lib. 1. Chap. 8. Sect. 5. fol. 5. b.*

(b) *Lib. 1. Chap. 5. Sect. 4. fol. 2.*

(c) The following Motto's were on the Rings of some of the Serjeants created in King Charles and King James the Second's Reign, "*Rege & Lege felices.*" "*Gratia Regis, non operibus Legis.*" *Freem.* 233. *T. Raym.* 238. "*Regi servire, Jura servare.*" *T. Raym.* 430. "*Regi Lex placuit.*" 2 *Show. Rep.* 283. *pl.* 278. *T. Raym.* 496. "*Deus, Rex, Lex.*" 3 *Mod.* 100. *Skin.* 252.

should

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should incline to Rigour, nor Discretion without Law, lest Confusion follow, should be put in Ure. My Meaning thereby (continues that able Judge) is not to allow of every Man's Discretion that sitteth on the Seat of Justice, for that would bring forth a monstrous Confusion; but that Discretion that ariseth upon the right discerning and due Consideration of the true and necessary Circumstances of the Matter: And as we commonly used to say, that Common Law is nothing else but Common Reason; and yet we mean not thereby that common Reason wherewith a Man is naturally endued, but that Perfection of Reason which is gotten by long and continual Study: So in associating Discretion so near to Law, it is not meant to prefer to that Society each Man's Discretion, which commonly rather deserveth the Name of Affection and Self-will, than of Discretion indeed; but that Discretion only we allow of in this Place, that either grave and reverend Men have used in such Cases before, or rises out of the Circumstances of the Matter. *Co. Treat. Bail, &c. 301. Chap. 13.*

The Discretion of the Judges ought to be thus described, *Discretio est discernere per Legem quid sit justum*; this is proved by the Common Law, in the Case of a special Verdict, & *super totam Materiam petunt Discretionem Justiciariorum*; i. e. they desire that the Judges would discern by Law what is just, and so give Judgment accordingly. *Fortesc. Rep. 393.*

If any Man thinks that a Person concerned in Interest by the Judgment, Action or Authority exercised upon his Person or Fortune by a Judge, must submit in all, or any of these, to the implied Discretion and

Lord Fortescue's Definition of a Judge's Discretion.

Lord Chief Justice Vaughan says no Man need submit to the Discretion of a Judge,

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and Unerringness of his Judge, without seeking such Redress as the Law allows him, it is a Persuasion against common Reason, the received Law and Usage both of this Kingdom, and almost all others.
Vaugh. 139.

Extraordinary
 Passage in the
 Considerations
 on the Lega-
 lity of general
 Warrants.

“ It is the undoubted *Right* and frequent Practice (says a late *(a)* Writer) of the *Judge* who is to try a Cause, when *any* Word in the *Record* appears to him *improper*, to *summon* the Attornies on both Sides, and *direct* an *Amendment*. If the Alteration is *immaterial*, *i. e.* if the Defect is such as could not have availed the Party in Arrest of Judgment, no Injury is done, and useless Objections prevented. If *material*, the Parties are at Liberty either to apply to the Court before Trial, or to move in Arrest of Judgment after it. The Alteration in the Case alluded to, was made in Consequence of an Application to the Judge by the Attorney for the Prosecution, desiring that the Defendant’s Attorney might be summoned to attend, in order to *amend* the *Record*. The Summons was granted, *of Course*; the Amendment desired was to insert the Word *Tenor* instead of *Purport*. The Judge was of Opinion that the Defect could be of no Consequence at all; but as the Amendment was desired by one Party, and no Objection made by the Attorney for the Defendant, *except declaring that he could not consent to any Alteration*, and as the Word *Tenor* is certainly in an Indictment for a Libel, the more proper and technical Word, he *directed* the *Amendment* to be made. Such was the

(a) The Author of the second Edition of “ Considerations on the Legality of general Warrants, &c.” printed in the Year 1765.

Alteration

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Alteration ; I hope for the *Honor* of the *Law*, I may venture to affirm, that if it had not been made, yet *no Advantage* of any *Defect* in the Word *Purport* could have *availed* in *Arrest* of *Judgment*."

As the above Passage is so nearly connected with the Subject of the following Sheets, it was thought proper to make a few juridical Remarks thereon.

The above Passage juridically remarked on.

I would ask by what Authority or Book-Case a single Judge has an *undoubted Right* to summon Attornies to his Chambers, and direct Amendments in the Records of the Court? And whether the Course (which is the Law) of the Court, *Hardr.* 98. has not constantly been, where either Party is desirous of altering a Record, to apply by Counsel in open Court for that Purpose? and the Reason is obvious, *viz.* because a Record being the Act of the Court, that is, of all the Judges thereof, they ought all to be applied to for Leave to make an Alteration in their Act; and I would further ask how it appeared to the Judge that there was an improper Word in the Record al-
luded to?

No Authority for a Judge to summon Attornies, and direct Amendments in Records.

Application for the altering Records ought to be by Counsel in open Court.

The Reason.

How the Judge discovered the Impropriety of the Record.

It seems very extraordinary to advance that a Judge is not to consider what he may *legally* do, but only the Consequence of what he does, as this is so notoriously contrary to the (a) Oath, Duty and Office of a Judge, I shall neither enlarge upon it, nor support my Assertion with legal Authorities, but only quote

Extraordinary Doctrine that Judge is not to consider the Legality, but the Consequence only of what he does.

(a) The learned Sir *Jahn Hawles* (see fol. 32. in Notes) says that if a Man swears what is true, not knowing it to be true, though it be logically a Truth as it is distinguished, yet it is morally a Lie; and if a Judge give Judgment according to Law, not knowing it to be so, as if he did not know the Reason of it at that Time, but bethought himself of a Reason for it afterwards, though the Judgment be legal, yet the pronouncing of it is unjust. *Hawl. Rem. Fitzbar. Tri.* 9.

that

that Part of the Passage in which such Doctrine seems to be advanced. "If the Alteration is *immaterial*, i. e. if the Defect is such as could not have availed the Party in Arrest of Judgment, no Injury is done, and useless Objections prevented. If *material*, the Parties are at Liberty either to apply to the Court before Trial, or to move in Arrest of Judgment after it."

When the Record was altered, amended and erased, the *Cause* for moving in Arrest of Judgment was *erased* also.

Could the Writer be in Earnest when he informs us that no Objection was made by the Attorney for the Defendant, *except declaring that he could not consent to any Alteration*.

It was moved in *Arrest of Judgment* on an *Indictment* for *libelling* the *Government*, and the Objection made was, for that the Charge which was laid to the Defendant was not so certain and particular as it ought to be, for the *Libels* were not set forth *in hæc Verba*, as they ought; neither was the Defendant charged directly with writing or making the very Words and Sentences expressed in the Indictment, but only that he made and wrote *Libels*, in which among others, was contained according to the *Tenor* and to the *Purport* following. *Carth.* 408. After the above Case had depended in the *King's Bench* several Terms, and after it had been several Times argued at the Bar, it was agreed by *Holt* Chief Justice, *Rokeby* and *Turton* Justices, upon solemn Argument on the Bench, *R. Raym.* 415. That if the Indictment had been for a *Libel*, containing, among others, to the *Purport* following,

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following, it had been ill, 12 *Mod.* 218. because it had not imported, that the Words were the specific Words which were in the *Libel*, *R. Raym.* 415. The Court must be Judge of the Words themselves, and not of the Construction the *Prosecutor* puts upon them, but according to the *Tenor* following imports the very Words themselves, 11 *Mod.* 79, 85, 96. for the *Tenor* of a Thing is the *Transcript*; and *Rokeby* said the Words, to the *Purport*, were loose and *useless* Words; and the Words, according to the *Tenor*, being of a certain and more strict Signification, the Force of the latter was not hurt by the former, which *Holt* Chief Justice agreed to, 2 *Salk.* 417. and if on the Trial the Words in the *Libel* had not been *exactly* the same with the Words in the *Indictment*, the Defendant could not have been found Guilty. 12 *Mod.* 218, 219.

Upon a special Verdict in an Information for a Libel, the Jury found all but *not* instead of *nor*, it was *nor* in the Record, and *not* in the Paper. The Solicitor (a) General said if the Substance was found it was sufficient to make it a Libel, especially it being an immaterial Variance; for *not* he said carried in it the same Sense as *nor*; therefore admitting it a Variance, it was an immaterial Variance. 11 *Mod.* 78. pl. 12. The (b) Attorney General took this Difference, that this was only a literal Variation, and made nothing in the Sense; and if this was to be

So also is the Word *nor* for *not*.

(a) *Simon Harcourt. Whit. Liff.* 169. 2 *R. Raym.* 1261. afterwards Lord Keeper, and Lord Chancellor. *Whit. Liff.* 135. *Burn. Hist. O. T.* 553. 2 *Ld. Raym.* 1317. Chancellors, &c. to *Chan. Rep.* and lastly Viscount *Harcourt.* 4 *Col. Peer. Engl.* 246.

(b) *Sir Simon Harcourt. Whit. Liff.* 167. *Burn. Hist. O. T.* 553.

a

allowed

allowed no Criminal could be punished: for suppose in the Libel the Word *though* was in the Information wrote *tho'*, this would be the same Objection.

11 *Mod.* 84. *pl.* 4.

Holt Ch. Just.

Holt Chief Justice: The Words *nor* and *not* have a grammatical Variation. 11 *Mod.* 85. The Question is, if this is such a Variance from the Information as to make the Defendant not guilty, &c. it is such a Variance. If a Libel be set forth in these *Englisch* Words, a Variance spoils the whole Information. Suppose the Jury had found no Title to the Libel, whereas the Attorney had set it forth and described it with a Title, it had been naught. What Rule shall the Court be guided by? It is true the Difference is trifling, but where shall we stop, if we begin to allow of any Variations in such Cases?

11 *Mod.* 96, 97.

Gould J.

Gould J. The Question is whether there be such a Variance between *not* and *nor*, as to make it a material Variance. The Words are materially different; for the one is a negative Copulative, and the other has a different Sense; so he concluded that Judgment ought to be for the Defendant. 11 *Mod.* 95. *pl.* 4.

Powel J.

Powel J. It is a Libel, and a very virulent one; and this Variance is a mere slip, but such an one as will occasion Judgment for the Defendant. *Not* may begin a Sentence, but *nor* cannot: It is a Relative, and of another Part of Speech. If the Court was not to stop at a Word, where would be the *ne plus ultra*. The Consequence might be ill, in giving a Loose in such Cases as these, tho' the Difference seems

seems small and trifling; for if Judges have such a Power, it may be carried to Cases of Treason, and endanger Mens Lives by Inferences. The Books are full of the Learning of Variance material and immaterial; he thought it not proper to extend Cases of this Kind for fear of the dangerous Consequences; and that Judgment should be for the Defendant. 11 *Mod.* 95, 96.

The Commitment of a Member of Parliament to the *Tower* for writing a seditious Libel against the King and Government, his Enlargement thence by the Court of *Common Pleas*, his suffering himself to be outlawed, together with the late several Prosecutions for Libels, have occasioned an almost universal Inquiry concerning that Law, which indeed is not at all to be wondered at, when the Severity of the Law touching Libels, as it has been some Times laid down, be duly weighed, for the Law of Libels says, "That the Repetition of a Libel, the Delivery of it unread to another, is a Publication; nay, the bare Possession of it has been deemed criminal, unless it be immediately destroyed, or carried to a Magistrate." See *Chap.* 8, 10.

In order to satisfy the public Curiosity were the following Sheets compiled, which the Author has endeavoured to do by dividing the whole Subject into 28 Chapters, those Matters which he thought were the principal Objects of Inquiry make the Heads of some of them; for Example, *Chap.* 13. Secretary of State. *Chap.* 14. Seizure of Papers. *Chap.* 15. Recognizances. *Chap.* 16. Surety of the Peace. *Chap.* 17. Privilege of Parliament. *Chap.*

25. Outlawry and Error. Chap. 27. Consequence of Punishment. And Chap. 28. Attachments of Contempt.

Full Information on the Subject of Libels.

MSS. Cases truly stated.

Lord Ch. Just. *Willes's* Case.

Extraordinary Resolutions of the Court Martial concerning that Judge.

Author's Observations.

Notes to the Work.

Execution.

Liberty of the Press.

The Author flatters himself, that the Reader will find full Information in whatever he may be in Search of on the Subject, as he thinks he may safely assure him, that every material Case to be met with in the Books, (after a most diligent Search,) is inserted; and that all the MSS. Cases are truly stated; the Case of the late Lord Chief Justice *Willes* in Chap. 28. was not inserted *so much for the Law of it*, as for the extraordinary Resolutions of the Court Martial concerning that able and upright Judge.

The Observations being the Sentiments of an anonymous Author, are no Authorities, and therefore appear unsupported by any; they are submitted to the Candor of the judicious Reader.

The Notes referring to the juridical Preferments of the Counsel who argued the several Cases, it is presumed will have their Use.

As to the Execution of the Work, the Author presumes to arrogate some Merit, in never referring his Reader to a Case not in Point, or omitting any that is.

This Book it should seem might serve as an Argument for the Liberty of the Press, since it shews the little Necessity there is of any farther Restraint upon it, by demonstrating, that every one who prints any Thing with a mischievous Intent, does it at his Peril.

THE PREFACE.

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As to the Author's Defects, he doubts not but ^{Defects.} that the Candor of his Readers will substitute the Words of *Horace* on a similar Occasion, in Excuse of them.

*Non ego paucis
Offendar Maculis, quas aut Incuria fudit,
Aut humana parum cavit Natura :—*

HOR. ART. POET. p. 610. v. 351, 352, 353.

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EXPLANATIONS.

EXPLANATIONS.

ABBREVIATIONS.

EXPLANATIONS.

A.

- Ander.* Lord Chief Justice *Anderson's* Reports. 1664.
Andr. *Andrew's* Reports. 1754.
Anon. Anonymous.
Append. Appendix.
Atk. Rep. *Tracy (a)* *Atkins's* Reports in Chancery in Time of Lord Chancellor *Hardwicke*. 1765.
Atk. Power, &c. of Parl. Lord Chief Baron *Atkins's* Power, Jurisdiction, and Privilege of Parliament, and the Antiquity of the House of Commons, asserted. fol. 1689.

B.

- B. R.* *Banco Regis*, i.e. The Court of King's Bench.
Bac. (b) Abr. New Abridgment of the Law. 4 vol. fol. 1762.
Barnard. K. B. Mr. Serjeant *Barnardiston's* Reports in the Court of King's Bench. 2 vol. fol. 1744.
Birch's Illustr. Pers. Doctor *Birch's* Heads of Illustrious Persons. fol. 1747.
Birch's Mem. 2. Eliz. ———— *Memoirs of Queen Elizabeth*. 2 vol. 4to. 1754.
Brañ. *Brañon*. fol. 1569.
Bunb. *Bunbury's* Reports in the Court of Exchequer. fol. 1755.
Burn's Ecclef. Law. Doctor *Burn's* Ecclesiastical Law. 2 vol. 4to. 1763.
Burn. Hist. O. T. Bishop *Burnet's* History of his own Time. 2 vol. fol. 1724.

C.

- C. P.* The Court of Common-Pleas.
Camd. Annal. Eliz. *Camden's Annales Elizabethæ*. fol. 1615.
Camd. Brit. *Camden's Britannia* by Doctor *Gibson*. 2 vol. fol. 1722.
Carth. Mr. Serjeant *Carthew's* Reports. fol. 1728.
Ch. Just. Chief Justice.
Chanc. Rep. Reports in Chancery. fol. 1736.
Chron. Jur. *Chronica Juridicialia*. 1739.
Clar. Hist. Rebel. Lord Chancellor *Clarendon's* History of the Rebellion. 3 vol. fol. 1702.
Co. Treat. Bail, &c. Lord Chief Justice *Coke's* Treatise of Bail and Mainprize, among his Lordship's Law Tracts. 8vo. 1764.
Col. Peer. Engl. *Collins's* Peerage of England. 5 vol. 8vo. 1756.
Comb. *Comberbach's* Reports. 1724.
Cow. Dict. Doctor *Cowell's* Law Dictionary. fol. 1727.
Cro. Car. *Croke Charles*, i.e. Reports by Mr. Justice *Croke*, in the Time of King *Charles* the First. 1683.
Cro. Jac. *Croke James*, i.e. Reports by the same Judge in King *James* the First's Time. 1683.
Crumph. Jur. *Crumpton's* Jurisdiction of Courts. French. 1594.

(a) The present Cursitor Baron of the Exchequer.

(b) This Work is generally attributed to *Matthew Bacon* of the *Middle Temple*, Esq; but I am apt to think that the late learned *L. C. B. Gilbert* was the Author of it. I believe, if the Reader will only give himself the Trouble to compare the Books attributed to the above Authors, he will have Reason to incline to my Opinion.

- D.
- Dalt J.* *Dalton's Justice.* 1746.
D'Anv. Abr. *D'Anver's Abridgment of the Law.* 3 vol. fol. 1725.
Dugd. Chron. Ser. *Sir William Dugdale's Chronica Series, at the End of his Origines Juridicales.* 1680.
Dy. Lord Chief Justice *Dyer's Reports.* fol. 1688.
- F.
- Fitzgib.* *Fitz Gibbons's Reports.* 1732.
Fleta. *Fleta, by Selden.* 4to. 1647.
Fortesc. de Laud. Leg. Angl. Lord Chancellor *Fortescue de Laudibus Legum Angliæ, i. e. in Praise of the Laws of England.* 1741.
Fortesc. Rep. Lord *Fortescue's Reports.* 1748.
Fost. Cr. Law. The late Mr. Justice *Foster's Report of Crown Law Cases.* 1762.
Freem. Rep. *Freeman's (Lord Chancellor of Ireland) Reports.* 1742.
- G.
- Gaz.* The *London Gazette.*
Gilb. Caf. Lord Chief Baron *Gilbert's Cases in Law and Equity.* 1760.
Gilb. Evid. His Lordship's *Law of Evidence.* 1760.
Gilb. Hifi. C. P. His Lordship's *History and Practice of the Court of Common Pleas.* 1761.
Godb. Mr. Justice *Godbolt's Reports.* 4to. 1653.
- H.
- Hardr.* Mr. Serjeant *Hardree's Reports.* 1693.
Har. Hifi. Ir. *Harris's History and Antiquities of Ireland.* fol. 1764.
Har. Justin. Doctor *Harris's Justinian.* 4to. 1756.
Hawk. Pl. Cr. Mr. Serjeant *Hawkins's Pleas of the Crown.* fol. 1762.
Hawl. Rem. Steph. Col. Tri. Mr. Solicitor General *Hawles's Remarks on Stephen Colledge's Trial.* fol. 1689.
Hob. Lord Chief Justice *Hobart's Reports.* fol. 1724.
Holt. *Jacob's (a) Cases in the Time of Lord Chief Justice Holt.* 1738.
Hor. Art. Poet. *Horace's Art of Poetry.*
- J.
- I. E.* *Id est, That is.*
2 Jo. Sir *Thomas Jones's (Lord Chief Justice of the Common Pleas) Reports.* 1695.
- K.
- K. B.* The Court of King's Bench.
Keb. Rep. *Keble's Reports.* 3 vol. fol. 1685.
2 Kel. *William (b) Kelynge's Reports.*
- L.
- L. C. J.* Lord Chief Justice.
L. S. *Loco Sigilli, i. e. instead of a Seal.*
Lamb. Sax. Laws. *Lambard's Saxon Laws, in his APKAIONOMIA.* fol. 1644.
Lawy. Mag. The *Lawyer's Magazine.* 2 vol. 8vo. 1761.
Lev. Mr. Justice *Levinz's Reports.* 2 vol. fol. 1762.
Lil. Abr. *Lilly's Practical Register.* 2 vol. fol. 1735.

(a) Pref. to Tab. of Ref. to L. C. J. *Holt's Arg. and Ref.* iv. Note (b).

(b) One of His Majesty's present Justices of the Peace for the City and Liberty of *Westminster* and County of *Middlesex*.

EXPLANATIONS.

xxiii

- M.**
Macaul. Hist. Engl.
Maitl. Hist. Lond.
Mar.
Mo.
Mod.
7 Mod.
8 & 9 Mod.
10 Mod.
11 Mod.
12 Mod.
MSS.
- Macauley's History of England.* 4to. 1765.
Maitland's History of London. 2 vol. fol. 1756.
March's Reports. 4to. 1675.
Mr. Serjeant Moor's Reports. fol. 1663.
Modern Reports, 6 vol. fol. 1757.
Farresley's Reports. 1757.
Modern Cases in Law and Equity. 1730.
Lucas's Cases in Law and Equity. 1741.
Report of Cases in the Time of Queen Anne. 1737.
Cases in the Time of King William the Third. fol. 1741.
Manuscript.
- N.**
Nom. Cap. Justic.
- Nomina Capitalium Justiciariorum, i. e.* The Names of the Chief Justices.
- P.**
P. & M. or Ph. & Mar.
Palm.
Phil. Grand.
Plowd. Com.
Poph.
Pref. to Tab. of Ref. to
L. C. J. Holt's Arg. &
Ref.
- King Philip and Queen Mary.*
Mr. Attorney General Palmer's Reports. fol. 1688.
Philipps's Grandeur of the Law. 12mo. 1685.
Mr. Serjeant Plowden's Commentaries. fol. 1761.
Lord Chief Justice Popham's Reports. fol. 1656.
Preface to Table of References to Lord Chief Justice Holt's Arguments and Resolutions in the Reports, at the End of his Lordship's Life. 1764.
- Q.**
Q. B.
- The Queen's Bench.*
- R.**
Raym. Lord, or R.
Raym. T.
Read. Stat. Law.
Reg.
Rep.
Rol. Abr.
Rol. Rep.
Rush. Collect.
Ruff. Pref. to Stat.
- Lord Chief Justice Raymond's Reports.* 2 vol. fol. 1765.
Sir Thomas (a) Raymond's Reports.
Readings upon the Statute Law. 5 vol. 8vo. 1725.
Registrum Brevium, i. e. Register of Writs. 1687.
Lord Chief Justice Coke's Reports. 7 vol. 8vo. 1738.
Lord Chief Justice Rolle's Abridgment of the Law. 2 vol. fol. 1668.
His Lordship's Reports. 2 vol. fol. 1676.
Rushworth's Historical Collections. 1680.
Ruffhead's Preface to 9th Vol. of Statutes at Large. 4to. 1765.
- S.**
Sachev. Tri.
Salk.
Saund.
Sav.
S. C.
Sess. Caf.
S. P.
Show. Rep.
Sid.
Sid. Gov.
Skin.
- Doctor Sacheverell's Trial.* fol. 1710.
Mr. Serjeant (b) Salkeld's Reports. 3 vol. fol. 1721, 1724.
Lord Chief Justice Saunderson's Reports. 2 vol. fol. 1686.
Mr. Baron Savile's Reports. 1675.
Same Case.
Sessions Cases, 2 vol. 8vo. 1760.
Same Point.
Mr. Recorder Shower's Reports.
Siderfin's Reports. 1714.
Sidney on Government. fol. 1751.
Mr. Serjeant Skinner's Reports. 1728.

(a) One of the Justices of the Court of King's Bench in Charles the Second's Reign, and Father to the late Lord Chief Justice Raymond.

(b) The two first Volumes were published by the late Lord Chancellor Hardwicke.

Spelm.

- Spelm. Gloss.* *Spelman's Glossary.* 1687.
St. Ch. Star-Chamber.
St. Tri. State Trials.
Str. Stra. *Strange's* (late Master of the Rolls) Reports. 2 vol. fol. 1758.
Sira. Dom. Doctor *Sirahan's Domat's Civil Law.* 2 vol. fol. 1737.
Swinb. *Swinburn's Testaments and Last Wills.* fol. 1743.
- T.
Tab. Judg. The Table of Judges.
Theo. Evid. Theory of (a) Evidence. 1761.
Tri. per Pais. Trials per Pais by *Duncombe.* 1739.
Trem. Entr. *Tremaine's Placita Coronæ, i. e.* Pleas of the Crown. fol. 1723.
- V.
Vaugh. Lord Chief Justice *Vaughan's Reports.* fol. 1677.
Ventr. Mr. Justice *Ventris's Reports.* 1696.
Vin. Abr. *Viner's Abridgment of the Law.* 23 vol. fol.
V. *Verfus, i. e.* Against. Verse.
- W.
Water. Fortesc. Illustr. *Waterhouse's Fortescutus Illustratus, i. e. Fortescue de Laudibus Legum Anglicæ* (in Praise of the Laws of England) illustrated. fol. 1663.
W. & M. King *William the Third*, and Queen *Mary the Second*, his Queen.
West's Disc. Treas. & Attaind. *West's* (Lord Chancellor of Ireland) Discourse concerning Treasons and Bills of Attainder, 1716.
Whit. List. *Whitworth's List of Lord Chancellors, Judges, Barons of the Exchequer, Masters of the Rolls, Attornies, and Solicitors General.* 8vo. 1765.
Wilk. Leg. Angl. Sax. Doctor *Wilkin's Leges Anglo-Saxonicae.* fol. 1721.
Wood's Inst. Doctor *Wood's Institute of the Common Law.* fol. 1763.
Wood's Civ. Law. His new Institute of the Civil Law. fol. 1730.

(a) Wrote by one of the present learned Judges:

N. B. The Figure preceding the Book referred to alludes to the Volume of the Work; if the Reader finds no Figure prefixed, the Volume alluded to is to be understood the first.

A

DIGEST of the LAW

CONCERNING

LIBEL S.

CHAP. I.

DEFINITION.

A LIBEL is (a) defined a malicious Defamation, expressed either in Printing or Writing, or by Signs, Pictures, &c. tending either to blacken the Memory of one who is dead, or the Reputation of one who is alive, and thereby exposing him to public Hatred, Contempt and Ridicule, and may be as well against a private Man as against a Magistrate; if it be made against a *private Man*, it may excite the Libelled, or his Friends to revenge, and be the Cause of Bloodshedding. If it be against a *Magistrate*, it is a Scandal to the Government. A Libel is punishable, tho' the private Man or Magistrate is dead at the Time of making the Libel; for others of the same Family are also provoked to a Breach of the Peace; and in the Case of a Magistrate deceased the Government is also traduced, which never dieth. *Swinb. 375. Part 5. Sect. 10. 4 Read. Stat. Law 149, 155. Wood's Inst. 444. Hawk. Pl. Cr. 193. B. 1. Chap. 73. Sect. 1. 5 Co. 125. 12 Mod. 221. Ld. Raym. 418. See 2 Salk. 419.*

Libel a malicious Defamation in Writing or Printing, or by Signs, &c. to blacken the Memory of the Dead, or Reputation of the Living.

Against private Men as well as Magistrates.

Government traduced.

(a) *Justinian's* Definition of a Libeller exactly corresponds with our Laws at this Day, viz. He who shall, to the Infamy of another, write, compose, or publish a Book, Song, or Fable, or maliciously procure any of these Acts to be done, is guilty of a Libel. *Har. Justin. 22. Lib. 4. Tit. 4. Sect. 1.*

B

It

Termed *Libellus famosus*, seu *infamatoria scriptura*.

An Offence at Common law.

Libels occasion Duels and Breaches of the Peace.

Written Scandal most detested.

It is termed (a) *Libellus famosus seu infamatoria scriptura*, and from its pernicious Tendency has been held a public Offence at the Common Law; for Men not being able to bear the having their Errors exposed to public View, were found by Experience to revenge themselves of those who made sport with their Reputations; from whence arose Duels and Breaches of the Peace: And hence written Scandal has been held in the greatest Detestation, and has received the utmost Discouragement in the Courts of Justice. *Wilk. Leg. Angl. Sax. 78. pl. 4. Lamb. Sax. Law 64. pl. 4. Bract. Fol. 153. Lib. 3. Cap. 36.*

CHAP. II.

W R I T I N G.

A Libel must be in Writing.

THIS Species of Defamation is usually termed *written Scandal*, and thereby receives an Aggravation, in that it is presumed to have been entered upon with Coolness and Deliberation, and to continue longer, and propagate wider and farther than any other Scandal. *3 Bac. Abr. 490. Lord Raym. 416. 12 Mod. 219.*

Quære, Whether sending an abusive Letter will bear an Action for Want of Publication? but such Letter, without other Publication, is punishable as a public Offence.

It seems to be a Matter of Doubt, whether the sending an abusive Letter, filled with provoking Language, to another, will bear an Action as for a Libel, because here is no Publication. But it seems to be clearly agreed, that the sending such Letter, without other Publication, is an (b) Offence of a public Nature, and punishable as such, in as much as it tends to create ill Blood, and causes a Disturbance of the public Peace; and if the bare

(a) Lord Chief Justice *Raymond*, in *Curl's Case*, said he did not think that *Libellus* was always to be taken as a technical Word, and asked whether *Trover* would not lie *de quodam Libello intitular* the New Testament, and whether the Spiritual Court did not proceed upon a Libel? Mr. Justice *Fortescue* said, a Libel was a technical Word at *Common Law*. Mr. Justice *Reynolds* said, that *Libellus* did not *ex Vi Termin* import Defamation, but was to be governed by the Epithet added to it. *2 Stra. 791.*

(b) Indictment for a Misdemeanor in sending libellous Letters to Correspondents by the Post. *4 Read. Stat. Law. 155.*

making

making of a Libel be an Offence, whether it be published or not, as it seemeth to be holden, surely the sending of it to the Party reflected on must be a much greater Crime. 3 *Bac. Abr.* 497.

And on this Foundation the Court of *King's Bench* granted an Information against a Person for sending an abusive Letter to Mr. (a) *Barnardiston*, therein calling him a rascally (b) *Fellow*, and a *Tom Fool*, you had better have held your Tongue; although he swore that he wrote this to the Party himself, and never made it public, being only a Piece of private Resentment. But the court held, that this Method provoked Persons to Dueling, that the Writing and Sending was a good Publication, and that the Intent of the Party shall not be explained by himself. *Michaelmas Term 5 Geo. 2. 1732. 3 Bac. Abr. 497. 2 Barnard. K. B. 102. 2 Kel. 58. pl. 2. The King v. Pillborough.*

Information granted for sending an abusive Letter, tho' written privately to the Party himself, and never otherwise published.

Writing a Letter to a Man, and abusing him for his public Charities, &c. is a libellous Act, punishable by Indictment. *Hob. 215.* And a private Libel, for a private Matter, as a Letter scandalizing a Person, courting a Woman, is indictable, and fineable to the King. *Sid. 270. pl. 26.*

Abusive Letter indictable and fineable.

On Rule to shew Cause why an Information should not go against the Defendant for Writing and Sending a Letter to one Mr. *Willis* the Prosecutor, wherein were these Words, viz. "You are a Scoundrel, and defrauded the King of his Duty, I will prick you to the Heart, and call you to an Account." The original Motion was made upon the Foot of a Challenge, but the Court inclining to think that the Words did not import a Challenge, they were for discharging the Rule; but then Mr. *Fazakerly* said that he submitted it, the Letter would at least amount to a Libel, for in it the Defendant calls Mr. *Willis* a Scoundrel, and therefore moved for an Information upon the libellous Matter, viz. *You are a Scoundrel, &c.* that it was as great an Offence to call a Man a Scoundrel as a Fool and a Rascal. Mr.

Information moved for upon the libellous Matter in a Letter.

(a) He was Lord of a Manor, and this Letter was wrote to him by a Copyholder. 2 *Kel. 58. pl. 2.*

(b) Mr. *Abney* believed the Court had never gone so far in any Case as they did in this; but still he said, Taking the Whole of this Letter together, which was sent to Mr. *Barnardiston*, he took it, there were Words of a greater Insult than barely calling a Man a Scoundrel. 2 *Barnard. K. B. 102.*

(a) *Abney* on the other Side said, if the Court had any Doubts with themselves, he prayed a further Day for answering the Gentlemen on the other Side; for now he said they had thought of a quite different Offence to maintain their Rule upon, from what they thought of at the Time they obtained it.

What Words do not import a Challenge. To reflect upon a Man in the Execution of his Office, libellous.

The Court said, That the Words did not import a Challenge; but to call a Man a Scoundrel, and to reflect upon him in the Execution of his Office, was Matter of a libellous Nature, and deserved to be punished by Information. The Court enlarged the Rule to a farther Day, viz. to shew Cause why an Information should not go for the Libel. Note, This was afterwards referred by Rule of Court. *Hilary Term 5 Geo. 2. 1732. 2 Kel. 58. pl. 2. 2 Barnard. K. B. 102. The King v. Pownall.*

Reason why such a Letter is a Libel.

It has been said, that the Reason why an abusive Letter sent to a Person (though never published by the Writer) should be a Libel, is this, because the Reproaches contained in it, may be so stinging, as to let him have no Ease, till he shews it to others, in order to consult what is proper to be done, and thereby exposes his own Shame, as contained in the Letter; which may have all the bad Effects of another Kind of Publication.

CHAP. III.

DEFAMATION.

Setting the Party in a scurrilous, ignominious Light, libellous.

AS every Person desires to appear agreeable in Life, and must be highly provoked by such ridiculous Representations of him, as tend to lessen him in the Esteem of the World, and take away his Reputation, which, to some Men, is more dear than Life itself: Hence it hath been held, that not only Charges of a flagrant Nature, and which reflect a moral Turpitude on the Party, are libellous, but also such as set him in a scurrilous ignominious Light; for these equally create ill Blood, and provoke the Parties to Acts of Revenge, and Breaches of the Peace. 3 *Bac. Abr.* 491.

(a) Afterwards a Baron of the *Exchequer*, and one of the Justices of the Common Pleas. *Fost. Cr. Law* 75. *Whitw. List.* 162, 154. *Bunb.* 347.

Hence it hath been held, that Words, though not scandalous in themselves, yet if published in Writing, and tending in any Degree to the Discredit of a Man, are libellous, whether such Words defame private Persons only, or Persons employed in a public Capacity; in which latter Case they are said to receive an Aggravation, as they tend to scandalize the Government, by reflecting on those who are intrusted with the Administration of public Affairs, which doth not only endanger the public Peace, as all other libels do, by stirring up the Parties immediately concerned in it to acts of Revenge, but also have a direct Tendency to breed in the People a Dislike of their Governors, and incline them to Faction and Sedition. 3 *Bac. Abr.* 491. *Hawk. Pl. Cr.* 194, *B. 1. Chap.* 73. *Seet.* 7.

Words not scandalous in themselves, if published in Writing, and tend to discredit, are libellous; if they defame Persons in a public Capacity, more aggravating.

As where a Person delivered a Ticket up to the Minister after Sermon, wherein he desired him to take Notice, that Offences passed now without Controul from the civil Magistrate, and to quicken the civil Magistrate to do his Duty, &c. and this was held to be a Libel, though no Magistrates in particular were mentioned, and though it was not averred that the Magistrates suffered those Vices knowingly. *Michaelmas Term* 16 *Car.* 2. 1664. *K. B. Sid.* 219. *pl.* 4. *Keb. Rep.* 773. *pl.* 8. *The King v. Prin.*

Ticket delivered to the Minister in Church to notice the Neglect of the Civil Magistracy, held a Libel.

General Misrepresentations of the Government, or the State of the Nation, or mutinous Hints, tend to excite Discontent and Sedition in the People. Of this Kind was the above Case of *The King v. Prin.* and this is the highest Offence of all, by as much as the whole is greater than a Part, and it may have a bad Effect upon the whole Frame of a Government.

I believe the Reason why my Lord *Coke* did not reckon this last as a Species of Libels, was because about his Time it would be considered as nearly approaching to Treason.

Seditious Libels nearly approach to High Treason.

C H A P. IV.

C E R T A I N T Y.

Ironical Expressions as libellous as downright Slander.

A great Statesman but no Soldier, to be imitated for his Courage. A great General but no Scholar, to be imitated for his Learning.

So where only the two first Letters of the Name are inserted.

IT seems to be now agreed, that not only Scandal expressed in an open and direct Manner, but also such as is expressed in (a) Irony amounts to a Libel; and that the judges are to understand it in the same Manner as others do, without any strained Endeavours to find out Loop-holes, or to palliate the Offence, which in some Measure would be to encourage Scandal; as where a Writing in a taunting Manner, reckoning up several Acts of public Charity done by one, says, (b) *You will not play the Jew, nor the Hypocrite*, and so goes on, in a Strain of Ridicule, to insinuate, that what he did was owing to his Vain-glory; or where a Writing, pretending to recommend to one the Characters of several great Men for his Imitation, instead of taking Notice what they are generally esteemed famous for, pitches on such Qualities as their Enemies charge them with the want of; as by proposing such an one to be imitated for his Courage, who is known to be a great Statesman, but no Soldier; and another to be imitated for his Learning, who is known to be a great General, but no Scholar, &c. which kind of Writing is as well understood to mean only to upbraid the Parties with the Want of these Qualities, as if it had directly and expressly so done. 3 Bac. Abr. 493. Hawk. Pl. Cr. 193. Chap. 73. Sect. 4. The King v. Brown.

And from the same Foundation it hath also been resolved, that a defamatory Writing expressing only one or two Letters of a Name, in such a Manner that from what goes before, and follows after, it must needs be understood to signify such a Person in the plain, obvious, and natural Construction of the

(a) In an Information for writing, &c. a Libel, it was held, that it lay for speaking *ironically*; and Lord Ch. Just. Holt said, it was laid to be wrote *ironic*, and the Defendant ought to have shewed at the Trial, that he did not intend to scandalize them; and the Jury are Judges *quo Animo* this was done, and they have found the ill Intent. 11 Mod. 86. pl. 5. See 4 Read. Stat. Law. 151. Barnard. K. B. 305. 2 Sef. Cas. 30.

(b) Hob. 215. Poph. 139.

whole,

whole, and would be perfect Nonsense if strained to any other Meaning, is as properly a Libel as if it had expressed the whole Name at large; for it brings the utmost Contempt upon the Law, to suffer its Justice to be eluded by such trifling Evasions; and it is a ridiculous Absurdity to say, that a Writing, which is understood by every the meanest Capacity, cannot possibly be understood by a judge and a jury. *Trinity Term 12 An. 1711.*

Justice of the Law rendered contemptuous by allowing trifling Evasions.

Hawk. Pl. Cr. 194. Chap. 73. Sect. 5. The Queen v. Hurt.

It is also clearly agreed, that any Defamation whatsoever, expressed either by Signs or Pictures, comes within the Notion of a Libel; as by fixing up a gallows at a Man's Door, or elsewhere, or by Painting him in a shameful or ignominious Manner, as by exposing a Man and his Wife by a Skimmington or Riding, tho' a special Custom is alledged for such Practice. *3 Bac. Abr. 490.*

Expressions by Signs or Pictures.

The above contains the best System of the Doctrine of Libels, that is to be found, and, one would think, is so full and plain, as that all future Doubts that could arise in this Learning, might be expounded by it.

Best System of the Doctrine of Libels.

Open and sarcastical Reproaches are allowed on all Hands to be Libels. Nothing then remains which may by any Possibility evade the Law, but Writing in *Allegory*. *3 Bac. Abr. 493.* Let us examine then what Right has the allegorical Style to escape better than the rest? If a Man draws a Picture of another, and paints him in any shameful Posture, or ignominious Manner, though no Name be to it; yet if the Piece be such, that the Person abused is known by it, the Painter is guilty of a Libel; what then should serve in Excuse for the allegorical Libeller? Abusive Allegory in Writing, has a very near Resemblance to this satyrical Kind of Painting: The Man that is painted with a Fool's Cap, or Coat, or with Horns, or whose Picture is drawn with Asses Ears, is certainly abused. See *Wood's Inst. 445.* But, says the Painter, he is disguised, and how can you pretend to know him. This is the very Subterfuge of the Writer of Allegory, and ought to have the same Answer; if it be the common Notion, that this Picture represents a certain Person, the Drawer is answerable for the injury he suffers. They that give Birth to Slander, are justly punished for it.

Open and sarcastical Reproaches.

Allegory

Painting a Man in a shameful Posture, or ignominious Manner, though without a Name, yet Painter guilty of a Libel.

Allegory like Painting.

Man painted with a Fool's Cap, &c. is abused.

Disguise Painter's Excuse.

Subterfuge of Allegorist.

Painter answerable for Injury Picture occasions.

Pointing

Pointing out under a Character, and then abusing the Character is a Libel.

Pointing out any Person under a Character, and giving him the Name of one famous in Story, and then abusing and reviling the Name and Character so fixed, is certainly a Libel of the same Kind with that of the Painter's, and has been often so taken in our Courts, pursuing therein the Intention of the great *Roman*, who marks, *ad infamiam alicujus*, for the Part which constitutes the Crime, in his Definition of this Kind of Injuries. See *Information against Printer of Mist's Journal*, Chap. 9.

Ad infamiam alicujus, Essence of the Crime.

Actions for scandalous Words have near Resemblance to Learning of Libels.

As no other Part of the Law has so near a Resemblance to the Learning of Libels, as that of Actions for scandalous Words, it may not be amiss, in this Place, to produce a few similar Authorities from thence, which being grounded upon the same Reasons, may cooperate to the same Ends.

Courts of Justice directed by received Opinion, and do not stick to the literal Sense of Words.

That Courts of Justice may be directed by the received Opinion, by the Sense of the World, and not stick to the literal Sense of Words, appears from this, that Words have been often adjudged scandalous, which, from the bare Meaning, no Scholar could find any harm in; but it was sufficient, that in the Country where they were spoke, they were universally understood to be Slander: For Example; To call a Counsellor at Law, in the North, *Daffa-down-dilly*, has been held actionable, because it was shewn to the Court that it bore the same Sense with *Ambidexter*. 4 *Bac. Abr.* 497. *Ambidexter* is an Epithet that one would think had nothing in its Meaning applicable to a Lawyer or Attorney; and yet it has obtained such a Construction, that to say it of either is actionable, not surely from the Import of the Word, but the bad Sense People take it in. *Godb.* 214. *pl.* 304. *Mo.* 409. *pl.* 533.

To call Counsellor at Law in the North *Daffa-down-dilly*, actionable, because it means *Ambidexter*.

Proof that Courts judge of Slanders, not according to Construction of the Law, but to the Meaning People take them in.

Hold Plea of Words in Languages which they may not understand.

A fuller Proof, that the Courts judge of Slanders, not according to any Construction put upon them by the Law, but according to the Meaning in which People that are Witnesses to them take them, is, that they hold Plea of Words spoke in Languages which the Judges may not understand; in *Welsh*, for Example, and decide according to the Effect which it is shewn to them to have upon the Reputation of the Party injured. 4 *Bac. Abr.* 498.

In the following Instance, a Letter is altered from what it is spoken, to make it Scandal, but surely very justly, since the Sneer with which it is uttered, gave the Speech all the Sting, and hurt the Plaintiff's Reputation as much, as if the Word which made it Scandal, had been actually mentioned.

In an Action on the Case, wherein Sir Miles Fleetwood, Receiver of the Court of Wards, was Plaintiff, and Auditor Curle Defendant, the Plaintiff had a Verdict and Judgment against the Defendant for these Words: Mr. Deceiver (*innuendo*, the Plaintiff) *hath deceived the King, and I have him in Question for it.*

A Writ of Error was brought in the King's Bench, and among other Objections, it was said, that the Words Mr. Deceiver could not mean Mr. Receiver, and so not support the *Innuendo*; but adjudged by all the Court that the Action lay. These are the Words of the Books.

"And for the first Words, Mr. Deceiver, it is an *ironical Allusion*, and Nickname to his Office and Place, and therefore the *Innuendo* is well applied; and if

such crafty Evasions should be admitted, it would be an usual Practice to slander without Punishment." *Cro. Jac. 557. pl. 3. Hob. 267. pl. 352.*

The Reason in the Book is the same, with little Variation. "And then the Word *Deceiver*, though in

Propriety it doth not import Receiver, yet Allusion and ironical Resemblance of the Name doth very well bear the Application

of the *Innuendo*; and if such a slight Evasion should be admitted, it would be a common Practice with crafty Wits to slander

safely. *Palm. 69. Godb. 341. pl. 435. Mar. 82. pl. 135. S. C.*

And Doderidge Just. said, that if the defendant had said to the Auditor, Mr. Fauditor, an action would well lie. 2 *Rol. Rep. 148.*

This leads us very naturally to a Consideration of the Power which Courts of Justice have to interpret those Mysteries of Iniquity.

From the Reasons of the Law, a Libel in *Hieroglyphics*, is as much a Libel, and as highly punishable, as an open

Invective. If it be really unintelligible to any one, it will pass for Nonsense with every one, and as such, meet with

Impunity: But if there be only a thin Veil, or aukward Disguise thrown over it, through which those who can see and

observe, may perceive the lurking Satyr within; a Court of Law will examine it narrowly, and judge of it according to

the Intention of the Maker, and the Influence it may have upon

Single Letter altered to make it Scandal.

Deceiver means Receiver.

Deceiver an ironical Allusion.

Innuendo well applied.

Fauditor for Auditor.

Power of the Court to construe libellous Mysteries.

Libel in Hieroglyphics.

Scandalous Words in an unknown Tongue, if not understood, not actionable, but if understood, they are. So in Libels.

Satyr not universally understood.

Rebus or *Anagram* may be a Libel.

Notion, that *he who applies a Libel, makes it*, may be Wit, but not Law.

Law of Libels severe, because they tend to Breach of public Peace, by provoking Parties injured to Revenge.

Since Scandal by Signs and Pictures is as obvious as if expressed by Writing, why not equally Criminal?

Bishops mean the Bishops of England.

Ministers in a Libel signify *Ministers of State* to the King of Great Britain.

the injured Party's Reputation. As scandalous Words, if they be spoken in an unknown Tongue, which none of the Auditors understand, will not bear an Action, because they do no Injury, *Danv. Abr.* 146. *pl.* 1, 2. yet, if they are understood by the By-standers, are actionable. *Ibid.* 162. *pl.* 5. Just so is the Case of Libels: If the World understands them to be such, the Law will make the same Construction; if the Satyr is not universally understood, the Law will not punish it.

From this Ground it appears, that not only an *Allegory*, but a *Rebus* or *Anagram*, which are still more difficult to be understood, may be a Libel; and a Court shall, notwithstanding its Obscurity and Perplexity, be allowed to be judge of its Meaning as well as other Readers.

But it has been often urged in Defence of Libellers, that *he who applies a Libel makes it*. This Notion has given Birth to much Wit, but is quite wide of Law.

Since the chief Cause for which the Law so severely punishes all Offences of this Nature, is a direct Tendency of them to a Breach of public Peace, by provoking the Parties injured, and their Friends and Families, to Acts of Revenge, which it would be impossible to restrain by the severest Laws, were there no Redress from public Justice for Injuries of this Kind, which, of all others are most sensibly felt; and since the plain Meaning of such Scandal, as is expressed by Signs or Pictures, is as obvious to common Sense, and as easily understood by every common Capacity, and altogether as provoking as that which is expressed by Writing or Printing, why should it not be equally criminal? *Hawk. Pl. Cr.* 193. *Chap.* 73. *Seet.* 3.

The Defendant was charged in an Information with writing a Libel against the Protestant Religion and Bishops, *Innuendo* the Bishops of England; he was found guilty; and in arrest of Judgment it was offered, that the Bishops libelled were not *English* Bishops, nor could the *Innuendo* support such Construction; but the Court took upon them to understand the Libel in that Sense, and over-ruled the Exception. *Trinity Term* 1 *Jac.* 2. 1685. *K. B.* 3 *Mod.* 368. *The King v. Baxter.*

Only the Words *Ministers* were used in a Libel, yet by suitable Averments in the Information, and Proof made of them to the Jury, they found those *Ministers* to be Ministers of State to his late Majesty, and the Defendant guilty. *Hilary Term* 5 *Geo.* 2. 1732. *K. B.* 3 *Bac. Abr.* 494. *The King v. Franklin.*

These are Examples of a Court of Justice insisting upon its Right of Understanding as much as common People. There was just Room, in *Baxter's Case*, for the Defendant's pretending that he meant not Protestant Bishops, but Popish; yet one must easily be satisfied, that where the Libel was in general upon the Protestant Religion, that the particular Satyr upon Episcopacy was not levelled at the Papists alone. In short this Case, though adjudged in a most unhappy Reign, is undoubtedly according to Law, and has been often imitated since,

Court insisted on its Right of understanding, as much as common People.

It is observable with what Discernment the Managers of this Prosecution proceeded; in a Book of Controversy as this was, there was Scope to punish the Author for a *Schismatical Libel*, a new Term of Art which some People have since attempted to bring into Use; but they very wisely thought the religious Dispute unfit for the Cognizance of Lay Heads, and only urged against the Defendant the Satyr upon the Bishops, who are, in our State, great Officers, and make up a Part of our Constitution.

Prosecution against *Baxter* well managed. *Schismatical Libel*.

Bishops make Part of the English Constitution.

An Action upon the Case was brought for dispersing a Paper, accusing a Gentleman, that he should say, *He could see no Probability of the Wars ending with France, till the little Gentleman on the other Side the Water was restored to his Right*, Innuendo, *the Prince of Wales*.

Holt C. J. The Innuendo will not make an Action upon the Case for a Libel good, if the Matter precedent is not certain, or importing Scandal, &c. to the Damage of the Party. If a Man is in Treaty with a Woman to marry, and another tells him, she is under a Pre-contract, this doth not import a Scandal; but yet if it is false, an action will lie. In Case upon a Libel, it is sufficient if the Matter is reflecting; as to paint a *Man playing at Cudgels with his Wife*. The Court were unanimous, that this was certain enough without the Innuendo. *Powell* allowed the Books to be Law, that where the precedent Matter is not certain, the Innuendo will not help. 11 *Mod.* 99. pl. 7.

Where the precedent Matter is not certain, the Innuendo will not help.

Action will lie for what is false, though it imports no scandal. See *Barnard. K. B.* 290.

Innuendo. *Powell J.*

The Defendant was indicted, for that he made, composed and writ a scandalous Libel, against one *Lambert* a Churchwarden and others, wherein were these Words, Here is three *Cockels* in this Place (meaning Cuckolds) we *now* (meaning *know*) them well, *be* (meaning *Lambert*) is a *Nave* (meaning *Knave*) he cheats and *rongs* (meaning *wrongs*) the County, and is the

Libel spelt badly yet held well.

Cur of a Son of a Whore. The Defendant demurred to this Indictment.

And Mr. *Fazakerly* moved for the Defendant to have it quashed, because these Words are not intelligible, and want a Meaning, and therefore are not injurious to the Prosecutor, nor indictable.

Lord Chief Justice *Raymond*: The present Libel is plain to all Men, and easily to be understood, and it would be hard that a Court of Justice must not understand it is spelt badly, when all the World besides make no Scruple to find the Signification of the Words; and if Men were not to be punished for speaking of these Sorts of Words, what an Inundation of Scandal would be let in upon us?

And Mr. Justice *Fortescue* cited the Case of the *Queen* against *Hurt*, where the Defendant was set in the Pillory for a Libel which had only the first and last Letter of the Name; for the Court there said they would make it Sense, and here the Court gave Judgment for the King. *Trinity Term 11 Geo. 1725. K. B. 2 Sef. Caf. 29. pl. 33. The King v. Edgar.*

Law cleared
from Imputa-
tion.

Thus I hope, our Laws stand cleared from an Imputation, which would be much to their Disparagement if true, *viz.* that it is in the Power of cunning People to make Libels which don't come within the Reach of the Law.

What Laws are
to be deemed
good.

In order to intitle Laws to the Name of Good, not only the Peace and Life, but also the Substance and Reputation of the Subject must be guarded and protected by them. This is a Position that I believe will be readily agreed to by all Sorts of Men.

Laws would be
very deficient, if
they allowed of
a certain Stile of
libelling.

Must it not then appear a monstrous Defect in our Laws, that there should be a certain Stile and Method of Writing, which a malicious Man may use at his Pleasure, and so destroy his Neighbour's good Name, without the least Inconvenience to himself? Certainly no good Laws ever gave Sanction to open Robbery, or clandestine Theft; to some Men their Reputations are as dear as their Lives, to most as valuable as their Property; why then should any kind of Depredation upon them be encouraged? Nor is he more a Thief who plunders his Friend's Fame boldly by open Invective, than he who slyly and secretly endeavours to steal it by Allegory, Hint, or Surmise. Whoever can think that any Indulgence should be shewn to the Libeller, who wraps himself up in Mystery and Obscurity, must reason, as we find in old

Good Laws ne-
ver encourage
Robbery.

Reputation as
valuable as Pro-
perty.

Authors

Authors the *Lacedæmonians* did, who, by a Law for that Purpose, encouraged private Thieving, in Favour of Ingenuity; and therefore will imagine, that we ought to favour allegorical Slander by Way of Encouragement to Wit.

Lacedæmonians made a Law to encourage private Thieving, in Favour of Ingenuity.

But whatever may be the particular Humour of some People, supported by their own feeble Arguments, can cast no Reflection upon our own Laws, since I think it is reasonably evident, that the Dispensers of them were always directed by those two Maxims in the Learning before us.

Dispensers of the Law always directed by two Maxims.

1. That every Thing in Writing, which imported or implied, or was generally understood to import or imply Reproach or Scandal, to any Person or Persons whatsoever, was a Libel.

1. That every Thing in Writing which imported Reproach was a Libel.

2. And that the Punishment of a Libeller was never to be lessened on Account of the Mystery in his Satyr; but always proportioned to the Mischief done, or the Poison intended to be conveyed by it.

2. That the Punishment was never to be lessened on Account of the Mystery, but always proportioned to the intended Mischief.

CHAP. V.

ACTIONS.

IN an Action upon the Case for a Libel, the Plaintiff declared that he had obtained a Patent to be Gunsmith to His Royal Highness the Prince of *Wales*, and that it having been advertised in one of the public News-Papers, called the *Craftsman*, that he had the Honour of making for and presenting to His Royal Highness a Gun of two Feet six Inches long in the Barrel, which would carry as far as Guns of a Foot longer in the Barrel, made by any other Person of that Trade; that it was so much approved of, that the Plaintiff had the Honour of kissing His Royal Highness's Hand; and that the Defendant falsely and maliciously, and with an Intent to scandalize the Plaintiff in his Art and Profession, did 4th *January* 1741, in the said public Paper publish and advertise of the Plaintiff, concerning his said Art and Profession, *inter alia* to this Purpose: "Whereas there was an Account lately in the *Craftsman*, of Mr. *John Harman* Gunsmith, his making Guns of two Feet six Inches in Barrel, to exceed any made

Action by one Tradesman against another for inserting an Advertisement in the News-Paper to his Discredit in his Way of Trade.

made by Others of a Foot longer (with whom it is supposed he is in Fee); this is to advise all Gentlemen to be cautious, the said Gunsmith not daring to engage with any other Artist in Town, nor even did he make any Experiment, but out of a Leather-Gun) as any Gentleman may be informed at the *Cross Guns* in *Long-Acre*," being the Defendant's Shop, by which the Plaintiff lost several Customers to his Damage. After Not guilty pleaded, there was a Verdict for Plaintiff, and 50*l.* Damages.

It was moved in Arrest of Judgment, that the Advertisement in the News-Paper was no Libel, and that if one Tradesman will pretend to be a greater Artist than Others, it is lawful for them to support their Credit in the same Way; and the Court held, that though the Defendant or any other of the Trade might counter-advertise what was published of the Plaintiff, viz. that he could do more than any other Man of the Trade, yet that that should have been done without any general Reflections on him in the Way of his Business; that the Defendant hath not contained himself within these Bounds, for that the Advice to *all Gentlemen to be cautious*, was a Reflection on his Honesty, as if he would deceive the World by a fictitious Advertisement, and had a plain Tendency to discourage People from dealing with him; and the Allegation that he would not engage with any other Artist in Town was setting him below the Rest of his Trade, and calling him a Bungler in general Terms, and not relative to the precedent Matter; it was charging the Plaintiff with being the last of his Trade, for the Words, *not daring to engage*, &c. stand independent of the Words next following, viz. *nor did he ever make the said Experiment*, &c. so that he is charged generally with the Want of Skill; that the Words *except out of a Leather Gun*, was charging him with a Lie, the Word *Gun* being vulgarly used for a Lie, and Gunner for a *Liar*; and that therefore the Words were libellous: The Plaintiff had Judgment, the Court being of Opinion that it tended to discredit him in his Business. *Easter Term 4 Geo. 2. 1731. 2 Stra. 888, 899. Barnard. K. B. 289, 438. Fitzgib. 121. pl. 6. 253. pl. 2. 3 Bac. Abr. 491, 492. 4 Bac. Abr. 494. Harman v. Delany.*

Action for a Libel in the "Post Boy," concerning a Charge of Felony.

In an Action for a Libel published in "*The Post Boy*," July 30th 1731. the Declaration set forth the Advertisement to the following Effect. *A Warrant of Felony having been issued out against John Lofield of such a Parish, this is to give Notice, that whoever shall apprehend him, shall receive a Reward of 10*l.* by me Bankcroft.*

Motion

Motion in Arrest of Judgment, for that as the Declaration was laid, the Plaintiff could not recover. It was not laid, that the Words were spoken any ways relating to the Plaintiff, nor one *Innuendo* to shew, that they any ways concerned him, and that this was necessary, *Cro. Jac.* 126. was cited: That the Declaration could not be maintained, because it is no where laid in it, that the Plaintiff had not such a Warrant issued out against him. That the Words *pro Procuracion' in Poculis* were bad, notwithstanding the *Anglice*, picking a Pocket, and for this Purpose was cited 2 *Keb. Rep.* 154. *Yelv.* 68. It was urged farther, that the Action was against three jointly, whereas the Actions ought to have been several.

It was answered by the other Side, that if the Word *Poculis* be rejected, it will stand thus: *Pro Procuracion'*, *Anglice*, picking his Pockets, or reject the *Anglice*, and then it will be for picking out of Cups, and either Way it will be good; that the Exception taken on Account of its not being laid in the Declaration, that the Words were related of the Plaintiff, must be fatal. But still, there would be enough upon the Record, to intitle the Plaintiff to his Judgment. There were several Counts in the Declaration, in three of which the Words are laid over various Ways, and then the Declaration charges, that the Defendant wilfully and maliciously intending to charge the Plaintiff with Felony on such a Day and Year, *Crimen Felonie ei imposuit*, and *postea eodem Die & Anno* the Defendant took up the Plaintiff and carried him before my Lord Mayor, charged him there with the Felony, and my Lord Mayor discharged him. The Jury upon this have given a Verdict for the Plaintiff, as to the last Counts, and acquitted the Defendant as to the others; so that, the single Question to be offered to the Court, is, whether, besides the three Counts for the Words, there are not two other Counts? And if so, the Plaintiff will be well intitled to his Judgment as to that, the Words *Crimen Felonie ei imposuit* made one Count, and the Words *et postea, &c.* made the other. The Words *et postea, &c.* contain a Charge of itself, which will well support an Action; and therefore that may well be considered as one Count intirely independent of the former. However upon looking upon the *Postea* it appeared, that the Jury had expressly found the Defendant guilty as to one of the Counts for the Words; and therefore the Judgment should be arrested, which was accordingly done. *Easter Term* 5 *Geo.* 2. 1732. 2 *Barnard. K. B.* 40, 124. 2 *Stra.* 934. 2 *Kel.* 213. *pl.* 168. *Lofield v. Bankcroft.*

C H A P. VI.

J U S T I F I C A T I O N.

No written
Scandal justifi-
able in an Ac-
tion.

In Actions for
Words, their
being true may
be pleaded in Ju-
stification.

Truth may be
shewn in Mitig-
ation of Dama-
ges, or of a Fine.

Truth in a cri-
minal Prosecu-
tion for a Libel
not justifiable.

IT seems now settled, that no Scandal in writing, is any more justifiable in a civil Action brought by the Party to vindicate the Injury done him, than in an Indictment or Information at the Suit of the Crown; for though in Actions for Words, the Law through Compassion, admits the Truth of the Charge to be pleaded as a Justification, yet this Tenderneſs of the Law is not to be extended to written Scandal, in which the Author acts with more Coolneſs; and Deliberation gives the Scandal a more durable Stamp, and propagates it wider and further; whereas in Words, Men often in an Heat and Paſſion ſay Things which they are afterwards aſhamed of, and tho' they ſeem to act with Deliberation, yet the Scandal ſooner dies away and is forgotten; and therefore from the greater Degree of Miſchief and Malice attending the one than the other, the Law allows the Party to juſtify in an Action for Words, though not for written (a) Scandal; from whence it follows, that the only Favour Truth affords in ſuch a Caſe is, that it may be ſhewn in Mitigation of Damages in an Action, and of the Fine upon an Indictment or an Information. Agreed by the Court in an Action upon the Caſe for publiſhing a Libel on Mr. *Branley* Recorder of *Warwick*. *Michaelmas Term* 8 *Geo.* 2. 1735. *K. B.* 3 *Bac. Abr.* 495. 4 *Bac. Abr.* 516. *Stra.* 498. *The King v. Roberts*.

It ſeems alſo to be clearly agreed, that in an Indictment or criminal Proſecution for a Libel, the Party cannot juſtify that the Contents thereof are (b) true, or the Perſon upon whom it was made had a bad Reputation; ſince the greater Appearance there is of Truth in any malicious Invective, ſo much the more provoking it is; for, as my Lord *Coke* obſerves, in a ſettled State of Government the Party grieved ought to complain for every Injury done him, in the ordinary Courſe of Juſtice, and not by any means to revenge himſelf by the odious Courſe of Libelling, or otherwiſe. 3 *Bac. Abr.* 495. *Hawk. Pl. Cr.* 194. *B.* 1. *Chap.* 73. *Seſt.* 6.

(a) My Lord Ch. Juſt. *Holt* was of a different Opinion. 11 *Mod.* 99. *pl.* 7.

(b) It was ſaid by Sir *Edward Coke*, that a Libel might be juſtified, if the Contents of it were true; but denied by *Hobart*. *Hob.* 253.

C H A P.

C H A P. VII.

Proceedings in a Court of JUSTICE.

IT seems to be clearly agreed, that no Proceedings in a regular Course of Justice will make the Complaint amount to a Libel; for it would be a great Discouragement to Suitors to subject them to public Prosecutions, in respect of their Applications to a Court of Justice; and the chief Intention of the Law in prohibiting Persons to revenge themselves by Libels, or any other private Manner, is to restrain them from endeavouring to make themselves their own Judges, and to oblige them to refer the Decision of their Grievances to those whom the Law has appointed to determine them. 3 *Bac. Abr.* 494.

No Proceedings
in a Court of
Justice, a Libel.

The printing a Charge of Extortion in his Office, against the Vicar General of the Bishop of *L.* and delivering it to several Members of the Committee of Parliament for the Examination of Grievances, is justifiable; but if he had delivered it to others, it had been otherwise; and the printing them, which is a publishing of them to the Printers and Composers, is not so great a Publication, as to have so many Copies transcribed by several Clerks. *Trinity Term 20 Car. 2. 1668. K. B. Lake v. King.*

Printing a
Charge, and de-
livering it to
Members of Par-
liament, justifi-
able.

The Matter being again at the Bar, *Keeling* and *Moreton* inclined, that the printing was not justifiable, and that the Committee ought not to be informed by printing, or Copies, but *viva Voce*. *Lev. 241.* But after in *Mich.* Term following, Judgment was given for the Defendant. *Lev. 241. S. C. Mod. 58. S. C.* but no Judgment. *Sid. (a) 414.* But *adjournatur*. *Saund. 131. S. C.* and there 133. reports, that after this Case had depended 12 Terms, Judgment was given for the Defendant by *Hale Ch. J. Twissden* and *Rainsford* upon this Point, *viz.* that it was the Order and Course of Proceedings in Parliament to print and deliver Copies, &c. of which they ought to take judicial Notice. 3 *Bac. Abr.* 498. *S. C.* cited *Hawok. Pl. Cr. 194. Chap. 73. Sect. 18.* and says it seems to be holden by some, That no want of Jurisdiction in the Court, to which such a Complaint

Held not justifi-
able.
Parliament
should have been
informed *viva Voce*, not by
printing, or Co-
pies.

Court to take
judicial Notice
of parliamentary
Proceedings.

No want of Ju-
risdiction in
Court will make
it a Libel.

(a) This Book says, that by the better Opinion a Person cannot justify the printing any Papers, which import a Crime in another, to instruct Counsel, &c. but it will be a Libel. *Sid. 414. pl. 15.*

D

shall

If Prosecution
false, &c.

Such Scandal
good Ground for
Indictment and
Action.

Grand Jury's
Presentment no
Libel.

Difficult to learn
the Adjudication
of *Lake v. King*.

Law of it of no
great Import-
ance.

Jurisdiction of
the House of
Commons called
in Question.

All Petitions to
the Commons law-
ful.

Case of *Kemp*
v. Gee.

Asbby v. White.

shall be exhibited, will make it a Libel; because the Mistake of the Court is not imputable to the Party, but to his Counsel. But if it shall manifestly appear, that a Prosecution is intire false, malicious and groundless, and commenced, not with a Design to go through with it, but only to expose the Defendant's Character, under the Shew of a legal Proceeding, Serjeant *Hawkins* says, he cannot see any Reason why such a mockery of public Justice should not rather aggravate the Offence, than make it cease to be one, and make such Scandal a good Ground for an Indictment at the Suit of the King, as it makes the Malice of their Proceeding a good Foundation of an Action on the Case at the Suit of the Party, whether the Court had a Jurisdiction of the Cause or not. *Hawk. Pl. Cr. 194, 195. Chap. 73. Sect. 8.* But it seems that no Presentment by a Grand Jury can amount to a Libel; because it would be of the utmost ill Consequence any way to discourage them from making their Inquiries with that Freedom, which is necessary for the public Good, by making them liable to Prosecutions on account of such Inquiries. *Hawk. Pl. Cr. Abr. 224. Chap. 73. Sect. 7.* but in the Book at Large it is *Sect. 8. 3 Bac. Abr. 495.*

The above Case of *Lake v. King* is reported by so many, and so differently, that it is with Difficulty we learn, that it was adjudged for the Defendant, and that the Publication of the Petition was held lawful; but it imports us little to know the Law of it, because one may venture to say it will never come into Practice again. The Reader will find, in examining the several Reports of this Case, that the Jurisdiction of the House of Commons was called somewhat in Question, and Arguments were made in Favour of the Plaintiff, from the Complaint being made to a Court that had not Power to redress it. But a Stop has been put to all such Proceedings for the future, by the Interposition of the Commons: They resolved that all Petitions to them were lawful, or at least only punishable by themselves, by the Vote of the 9th of February 8 W. 3. in the Case of *Kemp v. Gee*, in which *Gee* is voted guilty of a Breach of Privilege, in suing *Kemp* and others for a Libel, which supposed Libel was contained in a Petition by them presented to the House for Redress of Grievances. See Lord Ch. Just. *Holt's* excellent Argument in the famous Case of *Asbby v. White*, it is *verbatim* in that Judge's Life lately published, *Fol. 72 to 88.*

CHAP. VIII.

DISPOSAL of LIBELS.

IF one finds a Libel against a private Man, he may either burn it, or deliver it to a Magistrate immediately; but if it concerns a Magistrate, or other public Person, he ought immediately to deliver it to a Magistrate, that the Author may be found out. Libel against a private Man may be burnt or delivered to a Magistrate.

15 *Vin. Abr.* 88. pl. 3. 3 *Bac. Abr.* 497.

But it has been since said, that the not delivering it to a Magistrate was only punishable in the *Star-Chamber*, and that the bare having a Libel in one's Possession was no Offence. *Vent.*

31. But by latter Resolutions, it is said to be Evidence of his being Author or Publisher, for though he never publishes it, yet his having it in Readiness for that Purpose, if any Occasion should happen, is highly criminal, and tho' he might design to keep it private, yet after his Death it might fall into such Hands as might be injurious to the Government, and therefore Men ought not to be allowed to have such evil Instruments in their keeping, &c. *Trinity Term 9 Wil. & Mar.* 1698. *K. B. Carth.* 409, 410. 12 *Mod.* 220. *Lord Raym.* 417. *The King v. Bear.* The bare Possession of a Libel, Evidence of being the Author or Publisher.

CHAP. IX.

A U T H O R.

IT has been already observed, that a Libel may be expressed not only by Printing or Writing, but also by Signs or Pictures; but it seems that some of those Ways are essentially necessary; and it is laid down in *Lamb's Case*, 9 *Co.* 59. *Mo.* 813. pl. 1100. that every Person convicted of a Libel must be the Contriver, Procurer, or Publisher thereof. 3 *Bac. Abr.* 496. Libeller must be either the Contriver, Procurer, or Publisher.

It hath been strongly urged, that he who writes a Libel, dictated by another, is not guilty of the composing and making thereof, because it appears that another is the Author or Contriver; but herein the Court held, that the writing being the essential Part of a Libel, the reducing it into writing, in the first In-

If one dictates
and another
writes a Libel,
both are guilty
of making it.

Murdering a
Man's Reputa-
tion compared to
murdering his
Person.

When a Libel
appears under a
Man's Hand-
writing, he is
taken in the
Manner.

Finding a Man
guilty of writing
a Libel only, is
finding him
guilty of one
Species of ma-
king.

Clerk who
draws Indict-
ment, Student
or Reporter who
takes Notes,
lawful Writers
of Libels.
Copying a Libel
is writing it.

stance, was a making, and differed from a transcribing; and according to the Report of this Case, in 5 *Mod.* 163 to 167. it was held, that if one (a) dictates and another writes, both are guilty of making it, for he shews his Approbation of what he writes. So if one repeats, another writes a Libel, and a third approves what is written, they are all Makers of it, as all who concur and assent to the doing of an unlawful Act are guilty. See *Ld. Raym.* 418. and murdering a Man's Reputation by a Libel, may be compared to murdering a Man's Person, in which all who are present and encourage the Act are guilty, though the Wound was given by one only. *Hilary Term 7 Wil.* 3. 1701. *K. B.* 5 *Mod.* 167. *Comb.* 359. *The King v. Pain.*

It is said by *Holt Ch. J.* that when a Libel appears under a Man's Hand-writing, and no other Author is known, he is taken in the Manner, and it turns the Proof upon him; and if he cannot produce the Composer, it is hard to find that he is not the very Man. *Ld. Raym.* 417. 2 *Salk.* 419. 12 *Mod.* 220, 221.

And it is said to have been resolved by the Court, that in Libels making is the *genus*, composing or contriving is one Species, writing a second Species, and procuring it to be written a third Species: And finding a Man guilty of writing only, is finding him guilty of one Species of (b) making. 2 *Salk.* 419. *Lord Raym.* 418. 12 *Mod.* 220.

But yet in some Cases, the writing of a Libel may be a lawful or innocent Act, as by the Clerk that draws the Indictment, or by a Student or Reporter, who takes Notes of it, because it is not done *ad Infamiam* of the Party; but abstractedly considered, the writing a Copy of a Libel is writing a Libel, because such Copy contains all Things necessary to the Constitution of a Libel, *viz.* the scandalous Matter, and the Writing; and it has the same pernicious Consequence, for it perpetuates the Memory of the Thing, and some Time or other comes to be published. *Lord Raym.* 416, 417. 2 *Salk.* 418. 12 *Mod.* 220. *Comb.* 359.

(a) But in *Carth.* 406. it is said, that he who dictated cannot be indicted for this Libel, because he did not write it, and that therefore if the Writer could not, the Crime would go unpunished.

(b) Mr. Justice *Rokeby* said, if *A.* invents the Matter, *B.* makes Rhime of it, and *C.* writes it, every one, in common Understanding, may be distinguished by some special Term, as *A.* the Inventor, *B.* the Poet, *C.* the Writer, though the Law denominates them all Makers. *Lord Raym.* 418.

The

The most material Point settled by these two Cases, is, that Writing being the Essence of a Libel, the Person who appears to have once written a Libel shall be considered as the Maker of it; if no other be produced as the Author. Lord Chief Justice *Holt* held, that whoever had a Libel found upon him, was to stand in the Place of, and be considered as the Maker, until he produced another; for if he was not the Maker, he ought to have disposed of the Libel as the Law directs, and the Omission of his Duty shall be taken for a Presumption of his Guilt.

Writer of a Libel
Maker of it,
unless Author
produced.

The bare Posses-
sion of a Libel
deemed criminal.

The writing against the known Laws is held to be criminal, *4 Read. Stat. Law* 155. for the Laws are the only Means to preserve the Peace and Order of every Government, and therefore whatever exposes them, prevents the Peace and Order of the Government to be kept. *Barnard. K. B.* 163. *Fitzgib.* 65. *Ventr.* 293. *3 Keb. Rep.* 607. *pl.* 53. *2 Rol. Abr.* 78. *pl.* 2.

Writing against
the Laws criminal.

C H A P. X.

P U B L I C A T I O N.

THE reading of a Libel in the Presence of another, without knowing it before to be a Libel, or the Laughing at a Libel read by another, or the saying that such a Libel is made of *J. S.* whether spoken with or without Malice, amounts not to a Publication of it. *3 Bac. Abr.* 497.

Reading a Libel,
laughing at it,
&c. no Publication.

Also it is held, that he who repeats Part of a Libel in Merriment, without any Malice or Purpose of Defamation, is no way punishable. *Mo.* 627. But Serjeant *Hawkins* says, that the Reasonableness of this Opinion may justly be questioned, for that Jest of this Kind are not to be endured, and the Injury to the Reputation of the Party grieved, is no way lessened by the Merriment of him who makes so light of it. *Hawk. Pl. Cr.* 196. *Chap.* 73. *Seet.* 14.

Repeating a Libel
in Merriment
no ways punishable;
but of this Opinion
Hawkins makes
a Doubt.

But it seems to be agreed, if he who hath either read a Libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any Part of it in the Presence of others, or lend or shew it to another, he is guilty of an unlawful Publication of it. *3 Bac. Abr.* 497.

Lending or
shewing a Libel
is a Publication.

Writing

Copying a Libel,
no Publication
of it.

Writing the Copy of a Libel is not a Publication thereof; so said by *Holt Ch. Just.* and that writing the original Libel itself is the same; and if a Publication of it has been proved, it is Evidence that the Publication was by him who had it in his Custody. 12 *Mod.* 220. Lord *Raym.* 416. 2 *Salk.* 418.

Having Copy of
a Libel without
discourfing of it,
or delivering it
no Publication.

The finding two or three Copies of a Libel in a Person's Chamber, without discourfing of it, or delivering of it out, is no Publication. 12 *Vin. Abr.* 228. *pl.* 1.

Exposing Copy of
a scandalous
Letter, is pub-
lishing a Libel.

It has been often adjudged, that the exposing a Copy of a Letter sent to another Person, which contains scandalous Matter, is publishing a Libel; but I don't remember to have read, that the Receiver of a Letter is restrained from publishing or shewing it, if it be directed to him; tho' several Circumstances and Accidents may happen to make such shewing and publishing very scandalous to the Writer, and then it would seem that he might have an Action, if he could lay it to his Damage. *Quare de hoc.* See *Chap.* 2.

Though the Re-
ceiver of a Let-
ter not restrained
from shewing it,
yet *Quare*, whe-
ther under some
particular Cir-
cumstances an
Action would
not lie?

CHAP. XI.

PRINTERS.

Printing a Libel
is publishing it.

(a) **P** R I N T I N G a Libel is publishing it, 4 *Read. Stat. Law* 155. and if a Man is not able to give Account how he came by it, it makes him the Printer, and of consequence the Publisher. So the Delivery by a Printer to *S.* is a Publication by the Printer, and the Receiver is an Actor in that Publication, if he does not forthwith carry it to a Magistrate: If a libellous Paper be found in a Man's Custody, (as upon a Shelf in one's House or Shop, which was *S.*'s Case) it shall be thought he printed it, unless he can give a good Account how he came by it, to excuse himself. By *Parker Ch. Just. Hilary Vaca-*

Delivery by
Printer to Book-
seller a Publica-
tion.

If a Libel be
found in a Book-
seller's Shop, or
in any one's
House or Cu-
stody, he will be
deemed the Prin-
ter, unless good
Proof to the
contrary.

(a) But it hath been held, that the bare printing of a Petition to a Committee of Parliament, (which would be a Libel against the Party complained of, if it were made for any other Purpose than as a Complaint in a Course of Justice,) and delivering Copies thereof to the Members of the Committee, shall not be looked upon as the Publication of a Libel, in as much as it is justified by the Order and Course of Proceedings in Parliament, whereof the King's Courts will take judicial Notice. 3 *Bac. Abr.* 498.

tion

tion 3 Geo. 1717. at Guildball Sittings K. B. 12 Vin. Abr. 229. pl. 5. *The King v. Strahan.*

To which is added, that S. was a Bookfeller, and it could not be supposed but he had these Papers by Way of Trade; too foreign to suppose any one left them in his Shop. And whereas another Libel was found in his Pocket, it could not be supposed but that it was concealed there for a private Sale, no one taking upon him to sell such Things in public; and S. being informed against for publishing these Libels, he was found Guilty. *Ibid.*

If a Printer compose a Libel against a private Person not in Authority, he may be indicted and punished for it; and so he may who prints a Libel against a Magistrate, much more one who does it against the King and State. Nor can the Defendant excuse himself by saying they were dying Speeches, or the Words of dying Men; for if a Man would be as wicked at his Death as he had been in his Life, and justify his Villany, he who publishes it is punishable: As where a Highwayman shall at the Gallows arraign the Justice of the Law, and of the Judges who condemned him, he who publishes this shall not go unpunished. 4 *Read. Stat. Law* 154.

Printing a dying Speech which has Words reflecting on the Government, or a private Person, criminal.

No (a) Excuse for the printing or publishing a Libel, to say he did it in the Way of Trade, without Malice or ill Design against the Government, or to maintain his Family. A Thief might as well say, he stole to maintain his Wife and Children. *Stat. Tri.* 982.

No Excuse to say it was his Trade to print Books.

Resolved by all the Judges, that where Persons write, print, or sell any Pamphlet, scandalizing the Public, or private Persons, such Books might be seized, and the Persons punished by Law; and that all Persons exposing Books to Sale reflecting on the Government, might be punished; and farther, that all Writers of News, tho' not scandalous, seditious, or reflecting on the Government, if they wrote false News, were indictable and punishable. 4 *Read. Stat. Law* 154.

Pamphlets may be seized, and the Authors and Publishers punished,

Writers of false News punishable.

This was an Information, tried before the Chief Justice *Raymond*, at the Sittings in *London*, which charged the Defendant with printing and publishing an infamous Libel called

What shall be said to be a Libel.

(a) But still, where a Man appears to be well affected to the Government, and that it was a mere Oversight, he is seldom dealt with rigorously; especially if he declares who was his Author. See Doctor *Middleton's Case*, *Chap.* 26.

“ Mift's

"Mist's Weekly Journal," wherein the King's Title to the Crown, and his Legitimacy were called in Question.

Royal Family traduced under borrowed Names.

Beautiful Character of the Pretender.

Subjection of Englishmen.

Defendant charged as Printer.

Evidence that he acted as Servant to the Printer, whose Business was to clap down the printing Press.

Two Exceptions taken.

1st, No Libel upon the Royal Family.

2d, That the Evidence did not come up to the Charge.

1st Objection answered.

General Acceptation of Words.

2d Objection answered.

Treason.

"Mist's Weekly Journal," wherein the King's Title to the Crown was openly struck at, his Legitimacy called in Question, and the Persons of several of the Royal Family scandalously traduced under borrowed Names; by representing King *George* the First, under the Name of *Merewits*, the late King under that of *Esseff*, the Queen under that of *Sultana*; and at the same time drawing a beautiful Character of the Pretender in the Name of the young *Sopbi*, and setting forth the Tyranny and Subjection all *Englishmen* lay under, by representing us under the Name of the *Persians*. The Charge against the Defendant was for maliciously and traiterously printing of one of these Papers in particular; but the Evidence produced was, that he acted merely as a Servant to the Printer, and his Business was only to clap down the Press; and few or no Circumstances were offered of his knowing the import of the Paper, or being conscious of doing any thing illegal. Upon which Serjeant *Hawkins* took two Exceptions in his Argument for the Defendant; one, that this Paper ought by no means to be thought a Libel upon the Royal Family; because the Characters that are here drawn, are by no means agreeable to the Persons supposed to be represented; but if any thing relating to them, intirely opposite to what each are known to deserve: The other, that the Evidence against the Defendant by no means comes up to the Charge; for the Fact is charged to be attended with a malicious and traiterous Design, whereas nothing comes out upon the Proof, but that it was done through Ignorance, and in Obedience to his Master's Authority. But the Attorney (*a*) General answered to the first of these Objections, that it lies upon the Counsel for the King only to shew, that this Construction, which they have put upon the Paper, is such, as the Generality of Readers must take it in, according to the obvious and natural Sense of it; and if upon the hearing of the Paper read the Jury are of that Opinion, they are bound in their Consciences to find the Defendant guilty. And to the other, the Solicitor (*b*) General observed, that if they could have given Evidence of express Malice, this Fact would have been Treason within the Statute of 6 Ann. c. 7. but as it is, the Charge is only for printing and pub-

(a) Sir Philip Yorke, afterwards Lord Chief Justice of K. B. Lord Chancellor, and Earl of Hardwicke. Barons, &c. at End of Bunb'. Whitw. List. 167. 2 Lord Raym. 1331. Stra. 578. Whitw. List. 139. 2 Stra. 953. Whitw. List. 135. 2 Stra. 1071. 2 Kel. 134. Andr. 1. Atk. Rep. 1. 4 Col. Peer. Eng. 281.

(b) Sir Clement Wearg. 2 Lord Raym. 1331. Stra. 578. Whitw. List. 16. Barons, &c. at the End of Bunb'.

lishing a seditious Libel, and consequently the Circumstances of Malice are intirely immaterial. The Chief Justice accordingly agreed the Law to be so; and the Jury found the Defendant guilty. *Hilary Term 2 Geo. 2. 1729. Barnard. K. B. 304. The King v. Clerk.*

This was an Information of the same Sort with the former. The Evidence against the Defendant was, that there were two Servants of Mr. *Mist*, whose Business it was to put the Letters in order for Readiness to print them off, that the Defendant was one of them, and that this Work was called composing for the Press; the Defendant and the other accordingly composed together the printing of this Piece of *Persian* History, and one took one Column of it downwards, and the other, the other of it. Upon this Evidence Serjeant *Hawkins* objected, that whatever Interpretation the whole of this Paper might receive taken together, yet taken separately according to the Shares, which these two Persons had in it, the Part which the Defendant composed, could by no means receive such a Construction, and therefore he necessarily must be acquitted. Mr. *Kettleby* too took another Objection, that the Defendant was charged, *quod Libellum impressit & publicavit & imprimi & publicari causavit*, whereas by the Evidence on the Part of the Crown it appeared, that the Composing was only previously necessary to the pressing off, and consequently as the Defendant was only proved to have composed, he could not be found guilty of pressing off, which according to the general Notion of the Word, carried with it the same Idea as Printing, and therefore he said, the Information had not charged the Defendant with a proper Fact. The Counsel for the Defendant observed further, that no Evidence was offered of a Publication of this Libel, and therefore clearly as to that Part he ought to be acquitted. And besides, they said, the Information charged two Offences in distinct and separate Parts of it, one of printing this particular Libel *in hæc verba*; the other of printing a Libel generally; and therefore as to the last Charge, as no Evidence was given of two Offences, the Jury ought at least to acquit the Defendant. To the first Objection the (a) Attorney answered, that this pretended History was a Thing intire, one Part had a Dependence upon the other, and therefore he that is guilty of any one Part, must be guilty of the Whole. To the second he said, he would agree, that if this was a civil Suit, an Action brought against the Defendant for printing without Authority,

Against what Person an Information for a Libel may be brought.

Compositor of the Press.

Objections.

Charge not supported by the Evidence.

Composing not pressing off.

No Evidence of Publication.

Two distinct Offences charged in one Information.

Objections answered.

Evidence, tho' insufficient in a civil Suit, yet sufficient in a criminal Prosecution.

(a) Sir Philip Yorke. See fol. 24. in Notes.

Composing is publishing.

Copying a Libel publishing it.

Informations begun to be laid as this, ever since Lord Ch. Just. Holt's Time.

Defendant acquitted of the Publication, but found guilty of the printing.

to the Damage of a particular Person, the Evidence given here would not make the Defendant answerable; for he would have appeared to have acted merely as a Servant; and therefore as he had assisted in one Branch only of printing, and not in the Whole, he could not be subject to such an Action; but the present Case, he said, was in a Matter of a criminal Nature, where an Accessary in Part is Principal in the Whole; and therefore as the Defendant assisted in the composing, which was a Circumstance essentially necessary to there being any printing, he by that Act evidently made himself concerned in the Whole; besides, he said too, composing was taking a Copy of a Libel in Types and Figures, and that would make the Defendant a Publisher; for it has often been determined, that the taking of a Copy of a Libel was an Act of Publication: And this, he said, gave an Answer to the third Objection. And to the last he observed, that laying Informations in this Way was begun in the Lord Chief Justice *Holt's* Time, and it was done out of Caution, for fear they should not succeed in the particular Laying of the Fact. The Chief Justice agreed with the Attorney in all but the Act of Publication; but that was merely a Circumstance of printing; and accordingly directed the Jury to acquit the Defendant as to the Publication; but if they believed the Evidence, to find him guilty of the Printing, and the Jury did so. *Hilary Term 3 Geo. 2. 1730. Barnard. K. B. 305. The King v. Knell.*

CHAP. XII.

BOOKSELLERS and HAWKERS.

Booksellers or Hawkers punishable, though they know not the Contents of the Libel they sell.

IT is said, that if Booksellers or Hawkers publish or sell Libels, though they know not the Contents of them, yet they are punishable; the public Peace being to be more regarded than a private Interest. *Wood's Inst. 445. B. 3. Chap. 3.*

An Information was moved for against the Defendant, for selling and publishing a Libel against one *Chambers*; and it was insisted upon, for the Defendant, that she was sick, and that her Servant took the Libel into the Shop without her Knowledge.

But by the Court: This is no Excuse, for a Master shall answer for his Servant, and the Law presumes him to be acquainted with what his Servant does.

Master shall answer for his Servant.

Mr. Justice *Fortescue* said, that it had been ruled, that the finding a Libel on a Bookseller's Shelf was a Publication of it by the Bookseller.

Bookseller is the Publisher of a Libel found on his Shelf.

And Lord Chief Justice *Raymond* said, it had been ruled, that where a Master living out of Town, and his Trade is carried on by his Servant, the Master shall be chargeable with his Servant's publishing a Libel in his Absence. *Hilary Term 10 Geo. 1724. K. B. 2 Sess. Cas. 33. pl. 38. The King v. Dod.*

Bookseller is answerable for a Libel sold in his Shop by his Servant in his Absence.

It seems to be agreed, that not only he who publishes a Libel himself, but also he who procures another to do it, is guilty of the Publication; and it is held not to be material, whether he who disperses a Libel knew any thing of the Contents or Effects of it, or not, for that nothing would be more easy than to publish the most virulent Papers with the greatest Security, if the concealing the Purport of them from an illiterate Publisher would make him safe in dispersing them. *3 Bac. Abr. 497.*

He who procures the Publication of a Libel, equally guilty with the Publisher of the Libel himself.

And on this Foundation it hath been constantly ruled of late, that the buying of a Book or Paper, containing libellous Matter, in a Bookseller's Shop, is sufficient Evidence to charge the Master with the Publication, although it does not appear, that he knew of any such Books being there, or what the Contents thereof were; and it will not be presumed that it was brought and sold there by a Stranger, but the Master must, if he suggests any thing of this kind in Excuse, prove it. So ruled on Evidence at *Guildhall* by *Raymond* Ch. Just. *Hilary Term 2 Geo. 2. 1729. 3 Bac. Abr. 497. The King v. Nut.*

A Libel sold in a Pamphlet Shop by the Servant of the Owner of the Shop, for his Use and on his Account, the Owner knowing nothing of this Libel, yet he is guilty of a Publication.

The Defendant was indicted for being Publisher of a treasonable Libel. But the Evidence against her was only, that she kept a Pamphlet Shop, and that there the Libel was sold; but no Evidence was offered to prove her knowing of its being bought in or sold out; nay, she proved, that her House where she lived was a Mile from off the Shop, and that she had been Bed-ridden there for a long Time; so that the Presumption was on the other Hand, that she really knew nothing of it. Upon which, Mr. *Kettleby* said, he hoped upon this Evidence that the Defendant must be acquitted; for tho' indeed the Act of a Servant may charge a Mistress in a civil Suit, it was by no means reasonable it should charge her in a criminal Prosecution. He observed too,

Master answer-
able for his Ser-
vant's carrying
a Libel.

Master of a Shop
answerable for
all Books sold
in it.

that that Rule could certainly not hold in all Cases, that all those through whose Hands a Libel goes, are Publishers of it, if they do not discover it; for a Post-Boy that carries a Libel in the common Packet, can certainly not be punishable, as assisting to the Crime. The Chief Justice said, that the Case of the Post-Boy was not at present in Question, and therefore there was no Occasion to say any thing to it. But he observed, that if a Servant carries a Libel for his Master, he certainly is answerable for what he does, though he cannot so much as write or read. But however the present Case, the Chief Justice said, has been expressly determined, that the Master of a Shop is answerable for whatever Books are sold there. However, the Jury thought it a hard Case; and therefore refused to do any thing else, than find the Circumstances specially, that were given in Evidence before them. But the Attorney (a) General said, that these Circumstances were only Matters proper to induce the Jury to find the Defendant guilty of a Publication, and not suitable to a special Verdict; for they are only Evidences of a Fact. And therefore he proposed to the Jury, that they should give a general Verdict, and that the Defendant's Counsel should make a Bill of Exceptions to the Directions the Court gave to find the Defendant Guilty. But Mr. Kettleby said, that it has been doubted upon these Words in *Stat. Westm. 2. 13 Edw. 1. c. 31. proponat Billam Exceptionis*, whether *The King* is within the Benefit of the Act, it being unworthy of him to propose a Bill; but at least he said, it was not so proper a Method as the other. But the Court said, that though this has been doubted, yet in Misdemeanors it has been allowed, and is frequent in the *Exchequer* upon penal Statutes. But however, the Jury were unwilling to do any thing more, than what they had declared before; and therefore, as it was something of a hard Case too upon the Defendant, the Attorney General consented to withdraw a Juror. *Hilary Term 2 Geo. 2. 1729. Barnard. K. B. 306. Fitzgib. 47. The King v. Nutt.*

(a) Sir Philip Yorke. See fol. 24, in Notes.

CHAP. XIII.

SECRETARY of STATE.

THE Defendant was a Printer, and was committed in the Vacation by a Secretary of State, and on an *Habeas Corpus* returnable before Chief Justice *Parker* at his Chambers, he was brought before the Chief Justice, and entered into a Recognizance to appear the first Day of the Term.

Whether a Secretary of State may lawfully commit a Libeller without Oath? &c.

On that Day he appeared in the *King's Bench*, and moved to be discharged, taking several Exceptions to the Commitment.

The Warrant appeared to be, to authorize a Messenger forthwith to make strict Search for *Derby* the Printer, and to seize and secure him for publishing and vending a scandalous and seditious Libel called "*The Observer* N^o 74." and to bring him in safe Custody before me to examine the Premises, and to be farther dealt with according to Law.

First Exception was, that for a Libel a Secretary of State could not commit; but the Power of a Secretary of State to commit for Treason or Felony, was agreed to, and that a Messenger was a proper Officer; both Points being adjudged in the Case of *The Queen v. Kendal and Roe. Comb. 343. Holt 144. pl. 1. 12 Mod. 82. Skin. 596. pl. 9. Lord Raym. 65. Salk. 347. pl. 1. 5 Mod. 70. 2 Barnard. K. B. 346, 347, 348. 2 Kel. 162. S. P.* because it was no Offence on which a Commitment might by Law be, till Indictment or Presentment; that this was an Inhibition against all Bail, and that Commitments were Punishments only after Conviction, and not before; and without Hearing and without Oath to be seized and secured, is hard. That 25 *Ed. 3. c. 4.* says, no Man ought to be imprisoned but by Presentment, Indictment, or by Process of Law; and that lastly, the Defendant offered the Messenger 10,000*l.* Bail (a), but it was refused, saying he had Orders to bring him in Custody.

1st Exception; that no Commitment ought to be for a Libel, until Indictment, &c.

Bail was offered to the Messenger and refused.

(a) The Defendant was committed by a Secretary of State's Warrant for writing a seditious Libel, intituled "*The North Briton* N^o 45," the Court of *Common Pleas* discharged him without Bail, he being a Member of Parliament. MSS. *Easter Term 3 Geo. 3. 1763. C. P. The King v. John Wilkes, Esquire.*

Second.

2d Exception;
that no particu-
lar Offence is
set out.

Second Exception: Here is no particular Offence set out, it is only said in general Terms, for a Libel called "*The Observer*, N^o 74." In High Treason, it is no Escape if the Cause of Commitment do not appear in the Warrant. 3 Car. 1. is the Foundation of the Bill of Rights; Ministers of State sheltered themselves by urging it was *per Mandatum Domini Regis*; this falls short of that, for here is no Colour at all; the Paper is commendable, it is a Translation of *Tacitus*, where he talks of an angry addle-headed Projector: *Mente turbidâ* is the Expression.

3d Exception;
that the Time is
indefinite.

Third Exception: That the Conclusion is naught, because here is no Time fixed, when he is to be brought before the Secretary; so the Time being indefinite, it is a Commitment during Pleasure.

4th Exception;
that he ought
not to be com-
pelled to be exa-
mined.

Fourth Exception: That he is to be brought before him to be examined; so that a Secretary's Office is to be turned into a Court of Inquisition, where he is to be compelled to make Confession.

Then the Counsel for the Prisoner offered Affidavits, but the Court rejected them.

Answer to the
Objections;

This Warrant
not a Commit-
ment.
There ought to
be a reasonable
Time for Exami-
nation.

That it is too
late to except to
the Commit-
ment after en-
tering into Re-
cognizance.

In Answer to the Objections, it was said by the (a) Attorney and Solicitor (b) General, that if these Objections prevailed, it would make an End of all Warrants of Justices of Peace; and that this Warrant was not a Commitment, but only what was necessary in order to his being examined; and that a Justice might order to have him kept a reasonable Time to be examined: That by the Act of Spreaders of false News, he may be detained till he discovers the Author; that a Warrant was only to notify the Crime in general; nor was there ever any such Thing as a Time fixed in any Warrant whatever to come before a Magistrate. It was said also, that he could not now take Exception to the Commitment, because he had entered into a Recognizance to appear; so that he had acquiesced, and had got his Liberty by it; and it was also insisted, that were he never so innocent he could not be discharged the first Day of the Term, for that the constant Practice of the Court was otherwise; the true Question here is only,

(a) Sir James Mountague, 2 R. Raym. 1261. Whitw. List. 167. afterwards a Baron, and L. C. Baron of the Exchequer. 2 R. Raym. 1319. Bunb. 110. Whitw. List. 156, 162. L. C. J. Holt's Life, 98. in Notes.

(b) Robert Eyre. Whitw. List. 169. Burn. Hist. O. T. 538. afterwards a Judge of the King's Bench. 2 R. Raym. 1309. Whitw. List. 144. and L. C. Baron of the Exchequer. Bunb. 138. 2 R. Raym. 1331. Whitw. List. 156. L. C. J. C. P. Bunb. 197. Whitw. List. 146.

whether

whether a Secretary of State cannot send for an Offender to examine him, which surely he may; suppose this were a Libel, is there any other Method in the World to fetch the Party before him but this? And as to Bail being offered and refused, that can be no Objection, because a Messenger cannot take Bail, having no Authority so to do, if it were offered. It is agreed a Secretary of State may send for a Person to examine him for High Treason, why not for a Misdemeanor? The Reason is the same. The Meaning why the Species of Crime is set forth in the Warrant, is, that it may appear the Justice and Magistrate has Jurisdiction.

That a Secretary of State may send for an Offender to examine him.

A Messenger cannot take Bail.

If a Secretary may examine for High Treason, a fortiori, &c.

Offence set out, that Jurisdiction may appear.

Chief Justice *Parker*: The Defendant cannot be discharged, and the Warrant is good and legal. Suppose there be an Information to a Justice of Peace that one is a Felon, may not he send a Warrant to have him come before him? If the Officer must obey the Warrant, (as he must) he must seize him, and must secure him only for that Purpose, and this is nothing more. To have him examined is a Privilege, and for the Benefit of an innocent Man; for perhaps on the Examination he may clear himself, and then he will be discharged: Nay, in the Case of Felony, the Justice of Peace is bound to take his Examination.

Parker Lord Ch. Just. The Warrant is legal.

Examination may be for the Defendant's Benefit.

But it is said, there ought to be a Time fixed for his Examination. This was never done in this World, in any Warrant whatever, nor is it possible to do it without a manifest Injury to the Party; for suppose, for the Purpose, a Fortnight should be limited, the Party then must be in Custody all that Time, and perhaps he might be discharged the very first Day, and certainly would, if he did appear and was found innocent. The Law has already fixed a Time; for by Law the Officer is bound to carry him immediately before the Magistrate: If he delays any Time, it is against the Duty of his Office.

No Time for it is ever fixed.

If it were, it might be to the Prejudice of the Defendant.

As to setting forth the Crime in the Warrant, that is well enough; for the Warrant is to set forth the particular Species of Crime, but not the particular Facts of that Crime; as in a Warrant for Felony, you need not set out in the Warrant the particular Goods stolen. In the Case of *The Queen v. Kendal and Roe*, the Prisoner was not discharged, tho' they held the Warrant not sufficient to charge him with High Treason; but they bailed him to appear to a Charge for assisting one to escape for High Treason. If it were for High Treason, then he is not bailable: But when the Species of Crime does not appear, it does not appear to

The Species of the Crime is in the Warrant.

us he is notailable, and therefore we bail him. Here the Crime does appear, and he gives Bail to be forthcoming in order to examine this Matter; it is only in order to a Prosecution.

Powis Justice.
It is a Privilege
to be examined.

Justice *Powis*: It is a Privilege to be examined, which is not allowed in other Countries; where a Warrant is to bring one before a particular Justice, the Officer may carry him before another, if he be a nearer especially.

Eyre Justice.
The Warrant is
legal.

Justice *Eyre*: He cannot be discharged. A Secretary of State has a Power to issue a Warrant; it was held so in the Case of *The Queen v. Kendal*, and settled in Queen *Elizabeth's* Time. See *Andersf.* 297, 298. The Species of Crime is set forth, which is enough, it need not set forth the Facts, as on whom the Robbery was committed, or whose House broke open; publishing a Libel well known in our Law: Suppose it were only for Suspicion of High Treason, he shall not be discharged, but shall answer it. In that Case of *Kendal* and *Roe*, he might be innocent of the Crime charged, yet they continued him on his Recognizance, but did not discharge him. I do not know that ever there was any Time mentioned in any Warrant, so that Exception goes to all Warrants. Suppose the Warrant had been to commit him without Bail or Mainprize, if a Crime certain were charged, he should not be discharged. *Michaelmas Term 10 An. 1709. 2 B. Fortesc. Rep. 140. The Queen v. Derby.*

The Crime suf-
ficiently set
forth.

Time for Exa-
mination never
mentioned in
Warrants.

CHAP. XIV.

S E I Z U R E of P A P E R S.

*Sir John
Hawles's Sentiments
on the
Seizure of Pa-
pers.*

AS that eminent Lawyer, Sir *John (a) Hawles*, Knight, Solicitor General to King *William the Third*, of glorious Memory, the Author of that valuable Performance, intituled, "*The Englishman's Rights, and a Dialogue between a Barrister at Law and a Furyman,*" has given his Sentiments on this important Que-

(a) He was of *Lincoln's Inn*. In *Michaelmas Vacation 6 Wil. & Mar. 1694*. he was made King's Counsel, *Lord Raym. 19*. In *Easter Vacation 7 Wil. 3. 1695*. King's Solicitor General, and knighted by the King soon after His Majesty's Return from *Flanders*. *5 Mod. 24. Lord Raym. 57*. In which Office he continued to the Demise of that King, *2 Lord Raym. 748*. and was removed soon after the Accession of Queen *Anne*. *2 Lord Raym. 768*.

stion,

tion, whether the Seizure of Papers is legal? I will therefore insert them here.

“ It is not (says the above able Lawyer) an ancient Practice to seize Papers, tho’ of late used: It began, I believe, upon my Lord *Coke*, whose Papers were seized and carried to the Secretary’s Office, upon the like Pretences as of late, and when returned were *gelt* of many Bonds and other Securities, to a great many thousand Pounds Value, which never came to Light. It was afterwards practised upon some Members of Parliament; and as I remember, voted illegal, as undoubtedly it is; for though, some Times, you may meet with Papers, which may be Evidence against the Prisoner; so it is possible, that other Papers than the Prisoner’s may be mixed with his, to make good the Accusation; nay, which is worse, some of the Papers may be withdrawn, which may be the only Matter of his Defence; and that hath been often practised; and I cannot but remember a Story about this Matter: When Sir *William (a) Jones* died, it was said, that one from *Whiteball* offered Sir *William Jones* his Servant a great Sum of Money but to let him search his Master’s Study, to find a Paper which would discover great Matters. A certain Person discoursing with a Privy Counsellor about it, the Privy Counsellor said it was not true, “ for, says he, if we had a Mind to have done it, could we not send a Messenger on a Pretence of searching for treasonable Papers, and bring all the Study to *Whiteball*, and keep what we would of them?” *Hawl. Rem. on Steph. Col. Tri. 25.*

Not an ancient Practice to seize Papers.

Lord *Coke*’s Papers seized.

Papers of Members of Parliament seized, which was voted illegal.

Ill Consequence of seizing Papers.

Prisoner’s Defence hath often been taken away among his Papers.

Story about seizing Papers.

Messenger on Pretence of searching for treasonable Papers may bring the whole Study to *Whiteball*.

Motion, that the Defendant’s Papers seized by Virtue of a Warrant from one of the Secretaries of State, might be restored to him.

Papers seized by a Secretary of State’s Warrant.

It was alledged, that a Warrant was issued forth in the Name of the Duke of *Newcastle*, one of the principal Secretaries of State, which was directed to two of the King’s Messengers, requiring them, taking a Constable to their Assistance, to make diligent Search in the House of the Defendant, the Author of a treasonable Paper, intituled “ *The Royal Oak Journal*,” for all Papers of what Kind soever in his Custody, and to bring the said Papers before him; the Messengers without taking a Constable to their Assistance, entered into the Defendant’s House, seized his Papers, and brought them before Mr. *De La Faye*, who was the Duke of *Newcastle*’s Secretary, and a Justice of Peace.

“ *The Royal Oak Journal*.”

Messengers without Constable, enter Defendant’s House, seize Papers, and bring Defendant before Secretary of State’s Secretary.

(a) Attorney and Solicitor General to *Charles* the Second. *Dugd. Chron. Ser.*
119. *Whitw. List.* 167, 169. See 2 *Show. Rep.* 85: *T. Raym.* 312.

No Resolution
that Secretary of
State can grant
Warrant to seize
Papers.

Hereupon Defendant's Counsel said, that it never was yet resolved, that a Secretary of State could grant a Warrant to seize a Person's Papers, and it manifestly was against the Rights and Liberties of the Subject.

King's Bench
cannot make a
Rule upon Mes-
senger to restore
Papers.

My Lord Chief Justice *Hardwicke* said, as to seizing the Defendant's Papers, he would not give any Opinion, whether it was legal or not: The Court of *King's Bench* could not make a Rule upon the Messenger, who did seize them, to restore them; and therefore that Question was not properly before the Court for their Determination. *Michaelmas Term 7 Geo. 2. 1734. 2 Barnard. K. B. 346 to 348. The King v. Doctor Earbury.*

CHAP. XV.

R E C O G N I Z A N C E S.

Having traversed
Indictment,
Cause for dis-
charging Recognizance.

THE Defendant was bound by Recognizance to appear here for printing a seditious Libel concerning the *Scots Colony* at *Darrien*; and it appearing an Indictment had been found against him at the *Old-Bailey*, which he had traversed, and was to answer there, his Attendance was discharged here. *Easter Term 12 Wil. 3. 1700. K. B. 12 Mod. 348. The King v. Bell.*

Motion to be
discharged from
a Recognizance.

Motion, that the Defendant might be discharged from his Recognizance; the Recognizance was taken before a Justice of Peace on the 10th of *September* was Twelvemonth, and the Condition of it was, that the Defendant should appear in this Court on the last Day of the then next *Mich. Term* to answer such Matters, as should be there objected against him, and not depart without Leave of the Court, and to be of his good Behaviour in the mean Time. The Justice of Peace required him to give Bail to this Recognizance, and upon his omitting to do it committed him. Soon after the Chief (a) Justice of *England* granted his *Habeas Corpus* to bring him up before him, and upon his being brought up bailed him upon it. The Attorney (b) General filed an Information against him, which was not brought to Trial till the Sittings after last *Trinity Term*; and then was not tried by Reason

Chief Justice
bailed a Libeller
after a Justice of
Peace had re-
fused.

Information not
tried for want of
a full Jury.

(a) Lord *Raymond. 2 R. Raym. 1381. Whitw. 139.*

(b) Sir *Philip Yorke. See fol. 24. in Notes.*

that

that there was not a full Jury. Now the Defendant's Counsel said, the Prosecutor talks again of trying this Matter the Sittings after this Term; but he hoped the Defendant would be discharged. He submitted it, that the Construction of this Recognizance was, that the Defendant should appear in this Court on the last Day of the next *Michaelmas* Term, and to be of his good Behaviour in the mean Time, and not depart the Court without Licence. The Doubt, he said, he did agree would arise upon the Construction, which the Court would put on the Words *in the mean Time*. But if the Court should not confine the Sense of it to the End of the next Term, but should extend it to any period of Time, before they should signify their Licence for his departing, he submitted, it would be a Recognizance of a very extensive Nature; and such an one, as has never been allowed of since the *Habeas Corpus (a)* Act, and in *Dalt. J. 290.* it is held, that a Justice of Peace cannot take such a one. If the Sense of these Words then was to be confined to the Time, which he contended for, the Defendant clearly ought to be discharged; for there was not so much as a Charge against him for the Breach of his good Behaviour within that Time. But if this Sense of the Words was not to be admitted, and the Recognizance should be allowed to be legal even in that general Sense; yet still he submitted it, that the Defendant ought to be discharged, because by the Rules of the Court the Defendant is intitled to move, that he may be discharged after the End of the fourth Term, unless something can be shewn against him as a Breach of his good Behaviour within that Time. The four Terms were out at the End of last *Trinity* Term; and then nothing was done, but barely an Information filed against him, and if that should be sufficient, a Man would never be able to be discharged from such a Recognizance during his Life. The Chief Justice owned, that at the Time he bailed the Defendant, he did declare his Opinion was, that such a Recognizance could not be legal. But however, he said, there were a great Number of Precedents shewn him at that Time of Justices of Peace taking them, and even of such being made out in this Court since the *Habeas Corpus* Act. The Court upon this declared, that they would not enter into a Debate about a Question of this Nature so late in the Term; and therefore at present they would take the Recognizance to be legal. Then as to the other Question concerning the Construction of it, they agreed it to be manifest that the Words *in the mean Time*, must be ex-

Construction of
a Recognizance.

Of the Words
"in the mean
Time," in a Re-
cognizance.

Defendant on
Recognizance
may move to be
discharged at the
End of four
Terms.

(a) Stat. 31 Car. 2. c. 2.

Bare filing an Information within the four Terms, sufficient to prevent Recognizance being discharged.

When an Information has been granted against a Person for a Libel, and a Recognizance of Bail has been given, what shall be said to be the Construction of such Recognizance.

"*Robin's the Game, or Seven's the Main.*"

Non-appearance after Conviction, Breach of Recognizance.

tended to that Period of Time, before they should signify their Licence for the Defendant's departing. And as to the last Question they were clear of Opinion likewise, that the bare filing an Information within the four Terms was sufficient, unless there was manifest Reason to think, that this was done only to oppress the Subject. Accordingly the Motion was disallowed. *Michaelmas Term 5 Geo. 2. 1732. 2 Barnard. K. B. 85. The King v. Franklin.*

The Defendant had been indicted at *Hicks's Hall* for printing and publishing a Libel against the Government, called "*Robin's the Game, or Seven's the Main.*" He removed the Indictment by *Certiorari* into this Court, and one *James Robinson* and *Henry Rastall* entered into a Recognizance according to the Statute of 5 *W. & M. c. 11.* with Condition, that the Defendant should appear to this Indictment the first Day of last *Hilary Term*, that he should plead to it the same Term, and at his own Expence should either try it the same Term or the Sittings after, unless the Court should appoint another Time for the Trial; and in such Case should carry it down to Trial at the Time appointed by the Court. At the Trial on this Indictment, the Defendant was convicted; which Trial was not had till the Sittings after *Michaelmas Term*. This Term he was called upon his Recognizance to appear; and for not appearing, a Rule was made for estreating his Recognizance. Mr. *Marsh* and Mr. (a) *Strange* now said, that the Recognizance entered into by the Defendant's Sureties was put into the Rule for estreating the Defendant's Recognizance; whereas the Defendant himself was no Party to it; for which Reason they moved, that this Part of the Rule might be discharged. The (b) Attorney and (c) Solicitor General argued on the other Side, and said, that the Recognizance of the Sureties had certainly been broken; for it appears by the Record, that the Defendant did not appear till *Easter Term*; and in Fact, at the Sittings after *Mich. Term*, the Indictment was tried at the Expence of the Crown. Besides they submitted it, that the Defendant's not appearing after Conviction was a Breach of this Recognizance; for tho' the usual Words in Bail Recognizances, namely,

(a) Afterwards Master of the Rolls. *Whitw. 164. Pref. to Tab. of Ref. to L. C. J. Holt's Arg. and Ref. xi.*

(b) Sir *Philip Yorke*. See fol. 24. in Notes.

(c) *Charles Talbot*. *Whitw. 169. Barons, &c. at End Bunb. Stra. 693 to 953. Afterwards Lord Talbot, and Lord Chancellor. List of Chancellors, &c. prefixed to Chanc. Rep. Whitw. 135. 5 Col. Peer. Engl. 369. Birch's Illustr. Perf. 157.*

That

That the Defendant shall not depart the Court without Licence, be not put into these Recognizances entered into on granting *Certiorari's*; yet they apprehended by the Course of the Court they must be so understood; for otherwise they would signify little. The Court said it would not now be necessary to determine, what Construction these Recognizances ought to receive; for certainly the Recognizance of the Sureties ought not to be estreated on a Rule made for estreating the Defendant's. Accordingly this Part of the Rule was ordered to be struck out. But *Rayner* being found in the Hall, was brought into Court and committed, there being a *Capias pro Fine* out against him. However, the Court said, he might at any Time move in Arrest of Judgment before the Fine is set by the Court. *Hilary Term 6 Geo. 2. 1733. 2 Barnard. K. B. 232. The King v. Rayner.*

Usual Words not inserted in Recognizances on granting *Certiorari's*.

Surety's Recognizance not to be estreated with Defendant's.

Capias pro Fine. May move in Arrest of Judgment any Time before Fine set.

The Defendant had given Notice to the Attorney (a) General, that he should move the Court, that his Recognizance should be taken off the File and discharged, for certain Errors appearing upon the Face of it. He said, he had been taken up by a Warrant from one of the Secretaries of State, signed *De la Faye*; and he conceived that this Warrant ought to have been signed with the Name of the Secretary of State himself, and not with the Name of one who was but an Officer under him. When he was brought before the Secretary of State upon this Warrant, the Secretary of State committed him; and since a private Justice of the Peace has taken upon himself to bail him, requiring him to enter into this Recognizance; no Man, he submitted it, has Authority to bail another, unless he is equal to the Person committing. A Justice of Peace is an Officer inferior to a Secretary of State; and therefore he conceived that this Recognizance must be illegal. He also said, that he had entered into this Recognizance so long ago as *Mich.* Term last, and no Information has been filed against him, nor has he had one single Charge during all this Time. The Court said, that they believed it was usual for the Secretaries of State not to sign these Warrants themselves. To the second Objection, they could not inquire into it upon this Motion; because the Notice is, that the Court will be moved to discharge the Recognizance, for Errors appearing upon the Face of it. They did agree, that if there had been a Year passed from the Time that this Recognizance was given, and no Prosecution against the Defen-

Secretaries of State need not sign their Warrants themselves.

Defendant to be discharged at the End of four Terms.

(a) Sir *Philip Yorke*, afterwards Lord Chancellor, and Earl of *Hardwicke*. See fol. 24. in Notes.

dant,

dant, he would have been intitled to be discharged. But till then, by the Rules of the Court, he cannot; accordingly the Motion was refused. *Trinity Term 6 Geo. 2. 1733. 2 Barnard, K. B. 293. The King v. Doctor Earbury.*

When a Person is committed for a Libel upon the Government, what shall be said to be a proper Recognizance upon such an Occasion.

"The Royal Oak Journal."

No Examination. 2 *Kel.* 162.

See *Fortesc. Rep.* 357.

Informations exhibited in Court.

Motion that a certain Recognizance, by which Defendant was bound to appear in the Court of *King's Bench*, might be taken off the File; and that so much of a Rule of the said Court, as related to the Defendant's appearing to the said Recognizance might be discharged. It was alledged, that some Time before the Beginning of last *Mich.* Term, a Warrant had been issued forth in the Name of the Duke of *Newcastle*, one of His Majesty's principal Secretaries of State; directed to two of the King's Messengers, requiring them, taking a Constable to their Assistance, to bring the said Defendant, the Author of a treasonable Paper, intituled "*The Royal Oak Journal*." It was said, that the Warrant itself was illegal, as well as the Execution of it, for it was done without the Assistance of a Constable, and the Defendant not brought before the Secretary of State himself, as the Warrant directed, but before Mr. *De la Faye*, who was the Duke of *Newcastle*'s Secretary, and a Justice of Peace. No one was examined by Mr. *De la Faye* to prove the Defendant to be the Author of this Paper; nor did the Defendant confess it. However Mr. *De La Faye* told the Defendant he must commit him, if he did not enter into a Recognizance in the Sum of 100*l.* with two sufficient Bail, conditioned for his Appearance in the Court of *King's Bench* the first Day of last *Michaelmas* Term, and not depart the Court without Licence. To avoid being committed, the Defendant with two sufficient Bail entered into such Recognizance; and the Recognizance was signed *Ch. De la Faye*. The Defendant appeared in the Court of *King's Bench* on the first and last Day of last *Mich.* Term, and on the first and last Day of the three following Terms; but on the last Day of *Trinity* Term last, as soon as he had moved to have his Appearance recorded, he prayed to be discharged. Upon this the Attorney (a) General exhibited two Informations against him in open Court, and moved that he might be charged with them. Mr. *Masterman* accordingly demanded of the Defendant whether he appeared to them. The Defendant did not by any open Act either assent or dissent to the Question demanded of him; but insisted, that the Recognizance

(a) Sir *Philip Yorke*. See fol. 24. in Notes.

by which he was bound over to this Court, was illegal, and that he ought to be discharged from it. The Court told him, that the Court could not discharge his Recognizance. Upon that he went out of Court, and the Officer recorded his Appearance to the Informations. It was said, there were Precedents to justify a Justice of Peace in binding a Man over to this Court; but there was not one Resolution in the Books ancient or modern, to justify such a Practice. A Justice of Peace has a Jurisdiction which is confined within the Bounds of his County, and it would be a Matter very inconvenient to the Subject, if it should once be settled for Law, that a Justice of Peace in *Cumberland* might bind a Man over to this Court sitting at *Westminster*.

No Resolution for a Justice of Peace to bind a Man over to the King's Bench. See Stat. 18 Edw. 3. ff. 2. c. 2. 34 Edw. 3. c. 1. 1 & 2 P. & M. c. 13. 2 Barnard. K. B. 293. 2 Kel. 162.

He has only an inferior Jurisdiction, and his Proceedings cannot be brought into this Court but by *Mandamus*, or other legal Process issuing out of the Court. This is a Court of the greatest Dignity. Form of a Recognizance is to appear *coram me*, but does not say before whom by Name. *Un' Justiciar*, &c. 2 Kel. 162.

The Manner of taking the present Recognizance was illegal too, in as much as there was the Oath of no one, nor the Confession of the Party, at the Time it was required of him. The Form of it is likewise bad; for the Defendant is bound over to appear at the Court of *King's Bench* at *Westminster*; whereas the Stile of this Court is *coram Rege ubicunque*; it is not inserted in the Recognizance for what Cause he is to appear; the Recognizance is signed too, *Ch. De la Faye*; so that the Christian Name of *De la Faye* is imperfectly set out; and it no where appears in the Recognizance that he was a Justice of Peace. As to the Appearance of the Defendant, his Counsel submitted, that the Defendant in Fact did not appear to these Informations; and that he legally could not. He agreed, that when the Question was asked the Defendant, whether he appeared, he did not in Words directly refuse it; but he contended that the Recognizance by which he was brought into Court was illegal; which was the same Thing as if he had in Words directly contended that he was not obliged to appear. He submitted, that when the Officer of the Court demands of the Party whether he appears, the Party insists that he is not bound to appear; the Court tells him that he is bound to appear, and if he does not his Recognizance will be forfeited; the Party upon that goes out of Court, that that may as well be construed a Departure without Licence, as an Appearance; for which Reason the Officer did wrong in recording that the Defendant

No Oath.

Recognizance illegal.

fendant did appear to these Informations. But supposing the Fact to be that he did submit to appear; yet as the Recognizance, which is in the Nature of a Process, to bring the Party in to appear, was illegal, for the Reasons before given, the Appearance could not be legal neither.

Justice of Peace
for Middlesex
may bind over to
K. B.

The Chief (a) Justice said there was no occasion to determine whether in general Justices of Peace have Authority to bind over to this Court. The Person that did this in the present Case, was a Justice of Peace for the County of *Middlesex*, and undoubtedly he might bind over to this Court; this Court having a Jurisdiction of *Oyer* and *Terminer* for that County. However he had before him several Precedents of Justices of Peace of other Counties binding over to this Court likewise.

If Recognizance
illegal, Defen-
dant's Remedy
another Way.
2 *Barnard. K. B.*
293.

He had likewise before him several Precedents of Recognizances taken by Judges of this Court and Justices of Peace, wherein the Stile of their Authority was not inserted. He had seen several too, which are only in this general Form, *ad respondendum*, &c. And as to the other Exceptions, with regard to the Form of this Recognizance, if there was any Weight in them, the Defendant might have taken Advantage of them, if a *Scire Facias* had been brought upon it. But what the Defendant has done, has in Judgment of Law amounted to an Appearance, and as that is so, all Defects in the Recognizance are thereby cured; for this Purpose the Chief Justice mentioned the Case of *Widrington v. Charlton*, *Trin. 11 Ann. 1710.* that was an Appeal of Murder. The defendant did not appear till the *Exigent*; and when he did appear, his Appearance was entered in the most cautious Manner that could be; for it was in these Words, "And the aforesaid Defendant, saving to himself all Advantages and Exceptions as well to the original Writ, as to the Process, comes;" and thereupon for Faults in the *Exigent* demurred. Lord *Macclesfield*, Mr. Justice *Eyres*, and Mr. Justice *Powis* held, that all Defects in Process were cured by the Party's Appearance. Mr. Justice *Powel* indeed was of another Opinion, as this was a Writ of Appeal; but agreed such Defect would have been cured by Appearance in every other Action. The rest of the Court agreed with the Chief Justice in the present Case; accordingly the Motion was disallowed of. *Michaelmas Term 7. Geo. 2. 1734.* 2 *Barnard. K. B.* 346. 2 *Kel.* 161. *pl.* 134. *The King v. Doctor Earbury.*

Defects in Pro-
cess cured by
Party's Appear-
ance.

(a) Lord Raymond.

CHAP. XVI.

SURETY of the P E A C E.

THE Offences that call for Surety of the Peace are Cases of present continuing Violence; the Proceedings are to repress the Force, and to disarm the Offender. The Nature of Surety for the Peace.

The Proceedings stop when that End is attained; the Offence is no further prosecuted nor punished.

The Offence of Libelling is not a Breach of the Peace, it does not fall within any Definition of a Breach of the Peace, given by any of the good (a) Writers upon that Subject; all which Breaches, from Menace to actual Wounding, either alone or with many, are described to be Acts of Violence against the Person, Goods, or Possessions, putting the Subject in Fear by Blows, Threats, or Gestures, nor is the Case of a Libeller ever enumerated in any of these Writers among Breaches of the Peace; on the contrary, it is always described as an Act *tending* to excite, provoke, or produce Breaches of the Peace; and although a Secretary of State may be pleased to add the inflaming Epithets of treasonable, traitorous, or seditious, to a particular Paper, yet, no Words are strong enough to alter the Nature of Things; to say then, that a Libel, possibly productive of such a Consequence, is the very Consequence so produced, is, in other Words, to declare, that the Cause and the Effect are the same Thing. Libelling no Breach of the Peace.

But if a Libel could possibly, by any Abuse of Language, or has any where been called inadvertently, a Breach of the Peace, there is not the least Colour to say, that the Libeller can be bound to give Sureties of the Peace for the following Reasons. Libeller not bound to give Surety of the Peace.

Because none can be so bound, unless he be taken in the actual Commitment of a Breach of the Peace, striking, or putting some one or more of His Majesty's Subjects in Fear. The Reasons;

Because there is no Authority, or even ambiguous Hint, in any Law Book, that he may be so bound.

Because no Libeller in Fact was ever so bound.

Because no Crown Lawyer, in the most despotic Times, ever insisted, he should be so bound, even in Days, when the Press

(a) *Coke, Hale, Dalton, Hawkins.*

swarmed with the most envenomed and virulent Libels, and when the Prosecutions raged with such uncommon Fury, against this Species of Offenders; when the Law of Libels was ransacked every Term, when Loss of Ears, perpetual Imprisonment, Banishment, and Fines of 10 and 20,000*l.* were the common Judgments Fines in the *Star-Chamber*, and when the Crown had assumed an uncontrollable Authority over the Press. *Star-Chamb. Rep.* in Append. to Vol. 2. Part 2. *Rush. Histor. Collect.* 20, 33, 59, 60, 70. *Stat. Tri.* 279. 2 *Show. Rep.* 471. *pl.* 436. 2 Lord *Raym.* 767. See *Salk.* 101. *pl.* 15. 7 *Mod.* 9. *S. C.* See Chap. 27.

Liberty surrendered into the Hands of a Secretary of State.

By a contrary Doctrine, every Man's Liberty, would be surrendered into the Hands of a Secretary of State; he would be thereby impowered, in the first Instance, to pronounce the Paper to be a seditious Libel; a Matter of such difficulty, that some have pretended, it is too high to be intrusted to a special Jury of the first Rank and Condition; he is to understand and decide, by himself, the Meaning of every *Innuendo*; he is to determine the Tendency thereof, and brand it with his own Epithets; he is to adjudge the Party guilty, and make him Author or Publisher as he sees good. And lastly, he is to give Sentence, by committing the Party. All these Authorities are given to one single Magistrate, unassisted by Counsel, Evidence, or Jury; in a Case where the Law (a) says; no Action will lie against him, because he acts in the Capacity of a Judge. 2 *Rel. Rep.* 199. *Salk.* 397. 6 *Mod.* 46. *R. Raym.* 468. *Bac. Abr.* 555. 14 *Vin. Abr.* 579. (F) *pl.* 4.

No Action lies where Party acts as a Judge.

(a) The Reason of the Law is, that the Law and Courts of Law, and Justice, and Remedies against Wrong, ought to be free and open; and no Man must be frightened or discouraged from a legal Prosecution of his Right. *Att. Power, &c.* of Parliament. 8.

CHAP. XVII.

PRIVILEGE of PARLIAMENT.

THE Case of *The seven Bishops*, as far as it relates to Privilege of Parliament, may be stated thus.

The Petition of the seven Bishops in the Reign of King *James the Second* against the King's Declaration, setting forth, that it was founded on a dispensing Power, which had been declared illegal in Parliament, &c. was called a seditious Libel against the King; and they refusing to give Recognizances to appear in the Court of *King's Bench*, were committed to the Tower. 3 *Mod.* 212.

Petition of the seven Bishops in *James the Second's* Reign, called a seditious Libel, and their Lordships refusing to appear in *K. B.* were committed to the Tower.

Soon after they were brought up by a Writ of *Habeas Corpus* moved for on the Behalf of the Crown, to the Bar of the *King's Bench*, in order to be charged with an Information in the Name of the Attorney (a) General, for publishing a seditious Libel. They were assisted on this Occasion by four very able Counsel; Sir *Robert Sawyer*, who had been Attorney (b) General, Mr. *Finch*, who had been Solicitor (c) General, Serjeant (d) *Pemberton*,

Brought up to Bar of *K. B.* by *Hab. Cor.*

Names of the Bishops Counsel.

(a) Sir *Thomas Powis*. 3 *Mod.* 143. *Whitw. List.* 167. who acted his Part in this Trial as fairly as his Post could admit of. *Burn. Hist. O. T.* 742.

(b) *Whitw. List.* 167. *Burn. Hist. O. T.* 532.

(c) *Whitw. List.* 169. *Burn. Hist. O. T.* 668. *Dugd. Chron. Ser.* 121.

(d) *Keb. Rep.* 450. pl. 12. *Dugd. Chron. Ser.* 119. *Chron. Jur.* 205. Afterwards *Easter Term* 31 *Car.* 2. 1679. he was sworn a Judge of *K. B.* in the Place of Mr. Justice *Wylde*, who was then removed. 2 *Show. Rep.* 33. *T. Raym.* 252. *Dugd. Chron. Ser.* 120. *Chron. Jur.* 207. After *Easter Term* 32 *Car.* 2. 1680. Sir *Francis Pemberton* received his *Quietus*, and afterwards practised again in all the Courts in *Westminster-Hall*, but without the Bar as a Serjeant. 2 *Show. Rep.* 94. In *Easter Term* 33 *Car.* 2. 1681. he was made Lord Chief Justice of the *King's Bench*, in the Room of Sir *William Scroggs* who was displaced. 2 *Show. Rep.* 155. *Ventr.* 354. 2 *Jo.* 141. *Chron. Jur.* 207. In *Michaelmas Vacation* 34 *Car.* 2. 1682. he was made Chief Justice of the *Common Pleas*, [in the Room of Sir *Francis North*, made Lord Keeper of the Great Seal; he succeeded Lord Chancellor *Nottingham*, who died about that Time. 2 *Show. Rep.* 252. pl. 260. 2 *Jo.* 231. *Skin.* 83. *Chron. Jur.* 207.] This was at his own Desire, for that it is a Place (though not so honourable) yet of more Ease and Plenty, as the Lord Keeper said in his Speech to *Saunders*, upon his being placed Chief Justice of the *King's Bench*. *T. Raym.* 478. Lord *Pemberton* was put out in *Trinity Vacation* 35 *Car.* 2. 1683. and was succeeded by Sir *Thomas Jones*. 2 *Show. Rep.* 311. *Skin.* 122.

Two Objections
made to a Re-
turn of Writ.

First Objection
omitted.

Second Objec-
tion.

Defendants being
Lords of Par-
liament, ought
not to have
been committed
for publishing a
seditious Libel.

To what Cases
Privilege of Par-
liament extends.

Sir Robert Saw-
yer's Speech in
Support of Ob-
jection.

A Peer taken by
Capias, cannot be
charged with a
Declaration.

Commitment il-
legal, because to
keep for a Mis-
demeanor.

and Mr. (a) *Pollexfen*. These Gentlemen made two Objections to the Return of the *Habeas Corpus*, upon which they insisted the Bishops ought to be discharged.

The first Objection made to the Return, not at all affecting the present Question of Privilege is therefore here omitted; the second was, that the Bishops being Lords of *Parliament*, ought not to have been committed at all for the Crime mentioned in the Return, which was, publishing a seditious Libel, which is only a Misdemeanor, their (b) Privilege as Lords of Parliament protecting them from all Arrests, excepting for Treason, Felony, and such Breaches of the Peace, for which Sureties of the Peace might be required; that therefore they were not legally present in Court, and ought not to be charged with an Information, but should be set at Liberty, and then proceeded against *de novo* by the proper Process till they were legally brought into Court. In Support of this Objection, grounded on the Bishops Privilege as Lords of Parliament, Sir Robert Sawyer spoke as follows.

"It must be agreed to me, that if a Peer be brought into Court as taken by a *Capias*, he cannot be charged with a Declaration; and the Reason is, because the Process is illegal. Then, my Lord, with Submission, when a Peer comes upon a foreign Commitment, and is brought in Custody upon an *Habeas Corpus*, this is either in the Nature of a Process, or a final Commitment as a Judgment. They will not say that this is a good Commitment, so as to amount to a Judgment: For the Council Board could not give a Judgment in the Case. Besides the Commitment is illegal, because it is not a Commitment till they find (c) Security to answer an Information here, but it is a Warrant to

(a) Afterwards Attorney General and Ch. Just. of the C. P. Pref. to his Rep. *Whitw. List*. 146, 167.

(b) The Law of Privilege, touching the Imprisonment of the Persons of Lords of Parliament, declares generally, That no Lord of Parliament, sitting the Parliament, or within the usual Times of Privilege of Parliament, is to be imprisoned, or restrained, without Sentence or Order in Parliament, unless it be for Treason or Felony, or for refusing to give Security of the Peace, or Refusal to pay Obedience to a Writ of *Hab. Corp*.

(c) In all Cases where Security of the Peace may be required, a Lord of Parliament cannot be committed till that Security is refused; and consequently the Magistrate will be guilty of a Breach of Privilege, if he commits the Offender without demanding that Security. And although the Security should be refused, yet, if the Party is committed generally, the Magistrate is guilty of a Breach of Privilege, because the Party refusing, ought only to be committed till he has found Sureties: whereas by a general Commitment, he is held fast, even though he should give Sureties, and can only be discharged by giving Bail for his Appearance.

keep

keep them for a (a) Misdemeanor. Besides there is another Thing we have to say to this Warrant (for I am making Objections against the Validity of this Commitment); it does not appear that there was any Oath made, and therefore the Court must adjudge that there was no Oath made, and then no Man ought without Oath to be committed, much less a Peer. But that which we chiefly rely upon is, that my Lords ought not to have been committed for this, which is but a Misdemeanor at most: And if they use it as Process to bring my Lords to answer an Information, we say, by Law no such Process can be taken out against the Persons of Peers for bare Misdemeanors. I do agree that for Felony, Treason, or Surety of the Peace, the Persons of Peers may be committed; and that which is called Surety of the Peace in our Books, Mr. (b) Solicitor knows very well, in some of the Rolls of Parliament is called Breach of the Peace, but it is all one; and the Meaning in short is, that it is such a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties of the Peace. If it should mean a Breach of the Peace by Implication, as all Trespasses and Misdemeanors are said to be *contra Pacem* in the Indictment or Information, then it were a simple Thing to enumerate the Cases wherein Privilege did not lie; for there could be no Information whatsoever but must be *contra Pacem*, and so there could be no such Thing as Privilege at all. And besides, we say, the very Course of this Court is contrary to what they would have: For in the Case of a Peer for a Misdemeanor, you go first by Summons, and then you do not take out a *Capias*, as against a common Person; but the next Process is a *Distingas*, and so *ad infinitum*. And I do appeal to them on the other Side, and challenge them to shew any one Precedent, when a Peer was brought thus into Court to be charged with an Information, without it were in the Case of an apparent Breach of the Peace; for he must be charged in Custody, and there must be a *Commititur* to the Marshal to intitle the Court to proceed. Your Lordship will find but very few Precedents of Cases of this Nature about common Persons; for till within these fourteen or fifteen

No Man ought to be committed without Oath.

Lords of Parliament ought not to be committed for a Misdemeanor.

No *Capias* can legally issue against Peers for Misdemeanors.

Peers may be committed for Felony, &c.

Surety of the Peace all one with Breach of the Peace.

If Breach of the Peace by Implication,

there could be no Privilege. Course of the Court of K. B. against Peers.

No Precedent of Peers being brought into Court, but in Case of an apparent Breach of the Peace.

(a) The two excepted Cases of Surety for the Peace and *Hab. Corp.* both leave the Prosecution of all Misdemeanors still under Privilege, and do not derogate from that great Fundamental, that none shall be arrested in the Course of Prosecution for any Crime under Treason or Felony.

(b) Sir William Williams. *Whitw. List.* 169. 3 *Mod.* 143.

Years

Rule of the
Court to charge
common Per-
sons.

No Precedent of
attaching the
Person of a Peer.

Meaning of a
Breach of the
Peace.

Informations an-
ciently most fre-
quent in the
Star-Chamber.

Process there.

No Attachment
against a Peer.

Capias never is-
sues against a
Peer in Infor-
mations for
Misdemeanors.

Lord *Lovelace's*
Case.

Lord *Devon-
shire's* Case.

Precedent that
passed *sub Silentio*,
without Debate
or solemn De-
termination, not
binding.

Years there was no such Thing ever done against a common Per-
son; but this was the Rule. First, there went out a *Subpœna*,
and then an Attachment; and when the Party was taken up on
the Attachment, he was taken to come in upon Process, and
then the Court would charge him presently; but if he did ap-
pear upon the Summons, they would not charge him; but he
had Time to take a Copy of the Information, and an Impar lance
of Course till the next Term, before he could be compelled to
plead. But in the Case of a Peer, there never was any such Pre-
cedent as the attaching of his Person, but only a Summons and
Distress; and I would be glad the King's Counsel would shew
that ever there was any such Process taken out against the Person of
a Peer for a mere Misdemeanor. My Lord, it is plain what Breach
of the Peace means in every Information; and I only speak this,
to acquaint the Court how the constant Proceedings in all these
Cases have been. These Informations were anciently most fre-
quent in the (a) *Star-Chamber*: And what was the Process there?
Not the common Process of a *Subpœna*; that was not the
Course there; but the Process was a Letter from the Chancel-
lor, that if the Party upon that Letter did not appear, in a
common Case there went out an Attachment, but in a Peer's
Case never: And so it appears by *Crompt. Jur. Title Star-
Chamber.*" 33. Dy. 315. 4 *Inst.* 25. *Reg.* 287. See 3 *Mod.*
214.

And a little lower Sir *Robert Sawyer* says; "In my Experience
of these Matters, I don't know any such Proceedings against a
Peer; nay, I know it always to be the Case, that in Informa-
tions for Misdemeanors there did never issue out a *Capias* against a
Peer: And Mr. Attorney knows very well it was so in the late
Case of my Lord *Lovelace*; for that Case of my Lord *Devon-
shire*, that it was an express Breach of the Peace, though it was
debated and disputed then. So that I take it these noble Lords
cannot be charged with this Information, because they do not
come in by legal Process; and unless they can shew me any
Cases wherein a Peer did ever come in upon such a Commit-
ment, and answered to an Information upon that Commitment,
it must certainly be allowed not to be the legal Course; though
if such a Precedent could be shewn that passed *sub Silentio*, with-
out Debate or solemn Determination, that would not do, nor

(a) See Chap. 27.

could bind the rest of the Peers. If any Man would lose a particular Benefit he has, all the whole Body must not lose it: And the Benefit is not small, of Time to make his Defence, of imparling, of taking a Copy of the Indictment, and preparing himself to plead as the Case will bear: And indeed a common Person has used to have these Privileges, tho' in some Cases of late they have taken the other Course; and if a *Capias* went out (which we say cannot go against a Lord) and the Party were brought in, he was to answer immediately. Now, my Lord, I take it that the Privilege of Peers is in all Times the same with the parliamentary Privilege in Parliament Time, which reacheth to Informations as well as other Actions. My Lord *Coke* is express in this Point in 4 *Inst.* 25. If that Objection should hold good, that every Information being *contra Pacem*, that should be a Breach of the Peace, then, as I said before, Privilege will hold in no Information, which is contrary to that and all our Books: It is only such a Breach of the Peace as for which Security of the Peace may be required. Where it does not appear upon Record that the Persons committed are Lords of Parliament, there the Court have put them to bring their Writs of Privilege; but where it does appear upon Record that they are Peers, the Court is to allow and take Notice of their Privilege, and there needs no such Writ. I know no Difference between the Parliament Privilege and the Privilege of Peers out of Parliament; and it cannot be denied that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament Privilege. So that upon these Grounds, I do press that my Lords the Bishops may be discharged. If there be any Information against us, we are ready to enter our Appearance to answer it according to the Course of the Court: But if the Information be for no other Thing than what is contained in the Warrant of Commitment, then their Persons ought to be privileged from Commitment."

Mr. *Finch* and Serjeant *Pemberton* made short Speeches to the same Effect, but left the Weight of the Argument to Sir *Robert Sawyer*; so that the whole of what the Bishops Counsel said on this Point of Privilege is contained in the foregoing Speech; to which the King's Counsel made no other positive and clear Answer but this, that publishing a seditious Libel was such a Crime for

Benefit of Privilege not small.

To answer immediately on *Capias*.

Privilege of Peers is Parliamentary Privilege; it reacheth to Informations as well as Actions. Breach of the Peace only that for which Surety of the Peace may be required.

If it appears on Record that Persons committed are Lords of Parliament, their Privilege is to be allowed without Writ; otherwise not.

No Difference between Parliament Privilege, and the Privilege of Peers out of Parliament.

Finch and *Pemberton*, their Speeches short, and to same Effect.

King's Counsel's Answer.

Court over-rule
Bishops Coun-
sel's Objection.

for which Sureties of the Peace might be required, and therefore came not within the Benefit of Privilege according to the Rules laid down by the Bishops Counsel. 3 *Mod.* 214. the Court adopted this Answer, and upon this single Ground overruled the Objection made by the Bishops Counsel, and ordered the Information to be read, and the Bishops to plead to it. *Trinity Term 4 Jac. 2. 1688. K. B. The King v. The seven Bishops.* See the Trial at large, printed with the Approbation of Mr. Justice *Powell* the following Year.

Lawyers under-
stood that Peers
were privileged
from Arrests for
all Misdemean-
ors.

Course of the
Court affirmed.
Not encountered
by the King's
Counsel.
Nor denied by
the Court.

Privilege im-
pliedly, though
not expressly ad-
mitted.

Summons and
Distingas against
Peers for Misdemeanors,

Privilege in Tres-
pass and Debt,

seem a Proof
that Lords of
Parliament are
privileged in
Misdemeanors.

Privilege of Peers
same with Privi-
lege of Members
during Parlia-
ment.

Privilege of Par-
liament seems
more evident
than Privilege of
Peerage.

From this Report, it appears that it was at this Time generally understood amongst Lawyers, that the Persons of Peers were privileged from Arrests for all Misdemeanors for which Sureties of the Peace could not be demanded, as well as in civil Cases: For this is positively asserted and enlarged upon by the Bishops Counsel, and the Course of the Court is affirmed to have been accordingly; and these Assertions and Arguments are not encountered by any Reasons or Precedents produced on the other Side by the King's Counsel, though so much concerned to produce such, if there were any; nor were they denied by the Court; but they all impliedly (though not expressly) admit the Privilege to lie, by resorting to an Observation on the Nature of the Offence in Question, which takes it out of the Benefit of Privilege, namely, that publishing a seditious Libel is an Offence for which Sureties of the Peace may be required.

The Testimony of the experienced Sir *Robert Sawyer*, concerning the peculiar Process of *Summons* and *Distingas* used in the *King's Bench* against Peers for Misdemeanors, the Passage from *Crompton*, proving that no *Capias* lay against them in the *Star-Chamber*; the undoubted Existence of their Privilege in Trespass as well as Debt, though Trespass partakes in some Degree (and anciently did so much more) of the Nature of a criminal Prosecution; all these Circumstances taken together, seem to afford a tolerable Proof that the Lords of Parliament are intitled to such a Privilege of their Persons in Misdemeanors, as well as in civil Cases.

It appears further from the foregoing Speech of Sir *Robert Sawyer*, that the Privilege of Peers out of Parliament-Time was generally understood, and allowed to be of the same Extent with the Privilege of the Members of either House of Parliament during the Sitting of Parliament. And upon this Analogy between the two Privileges, Sir *Robert* endeavours to prove the Privilege of

of Peerage from that of Parliament, which latter he seems to think the more evident of the two.

This shews that the Privilege of Parliament was at that Time very confidently and generally allowed to extend to Misdemeanors, as well as to civil Actions: And this general Opinion seems to be a considerable Proof of the Law in this Case, if not itself to constitute the Law. But if this be not thought a sufficient Ground for such a Conclusion, we may yet make use of the other Opinion of the Analogy between the two Privileges of Peerage and Parliament, and supposing it to be as well grounded as it seems to have been generally received, we may reason upon it in a contrary Order to Sir *Robert Sawyer*, and derive by Means of it the latter Privilege from the former: For having collected a Variety of Circumstances (which have been just now recapitulated) that tend to prove that the Peers were intitled to such a Privilege, we may conclude, if this Analogy be allowed to subsist between the two Privileges, that the Members of the House of *Commons* are likewise intitled to the same Privilege in the same Cases during the Sitting of Parliament.

Privilege of Parliament extended to Misdemeanors.

Analogy between the two Privileges of Peerage and Parliament.

Members of Parliament intitled to same Privilege as Peers, during the Sitting of Parliament.

John Wilkes, Esq; was committed to the *Tower* by the Lords *Egremont* and *Halifax*, the two principal Secretaries of State, for refusing to enter into a Recognizance to appear before the Court of *King's Bench*, and was now brought into the Court of *Common Pleas*, by the Deputy Lieutenant of the *Tower*, upon an *Habeas Corpus* to him directed.

Defendant committed to the *Tower* by Secretary of State's Warrant for refusing to enter into a Recognizance to appear in *K. B.*

The Return was read, and the Warrant was as follows, viz. Return read.

" *Charles Earl of Egremont*, and *George Dunk Earl of Halifax*, Lords of His Majesty's most honourable Privy Council, and Principal Secretaries of State.

Copy of Warrant.

" These are in His Majesty's Name to authorize and require you to receive into your Custody the Body of *John Wilkes*, Esq; herewith sent you, for being the Author and Publisher of a most infamous and seditious Libel, intitled " *The North Briton*, N^o 45." tending to inflame the Minds and alienate the Affections of the People from His Majesty, and to excite them to traitrous Insurrections against the Government; and to keep him safe and close

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until

until he shall be delivered by due Course of Law, and for so doing this shall be your Warrant. Given at Saint *James's* the 30th Day of *April* 1763. in the *third* Year of His Majesty's Reign."

Signed

EGREMONT. (L. S.)
DUNK HALIFAX. (L. S.)

To the Right Honourable *John*, Lord *Berkeley* of *Stratton*, Constable of His Majesty's *Tower* of *London*, or to the Lieutenant of the said *Tower*, or his Deputy.

Return filed.

Two Exceptions taken; and that Defendant being a Member of Parliament might be discharged.

Lord Chief Justice *Pratt's* Argument on delivering the Resolution of the Court.

Defendant being a Member of Parliament ought to be discharged.

The first Objection.

Whether stating the Evidence be essential to the Validity of the Warrant.

The Return being read, Mr. Serjeant *Glyn* (the Defendant's Counsel) prayed it might be filed, which was ordered accordingly; and then he took two Exceptions to it, and submitted further, that the Defendant being a Member of (a) Parliament, was intitled to his Privilege, and ought for that Reason alone to be discharged.

After solemn Argument at the Bar, and Time taken for Consideration, the Chief Justice delivered the Resolution of the Court, (which was unanimous) to the following Effect.

Pratt Ch. Just. "When this Return was read, my Brother *Glyn*, Counsel for Mr. *Wilkes*, made two Objections to it; and tho' those should fail him, he insisted that Mr. *Wilkes* from the Nature of his particular Station and Character, as being a Member of the *House* of *Commons*, was intitled to Privilege of Parliament, and ought for that Reason alone to be discharged from his present Imprisonment. To begin with the Objections. The first was, that it did not appear by the Warrant that Mr. *Wilkes* stood charged upon any Evidence with being the Author of the Libel described in the Warrant, the true Question arising upon this Objection is, whether stating the Evidence be essential to the Validity of the Warrant, and upon this Point we are all clearly of Opinion that the Warrant is good; we consider the Secreta-

(a) He represented the Borough of *Aylesbury Bucks*, remarkable for the famous contested Election in Queen *Anne's* Reign, wherein Lord Chief Justice *Holt* delivered his excellent Argument, contrary to the Opinion of the other three Judges of the Court; the Reader may see it (and it is well worth his Perusal) in the Life of that eminent Chief Justice, lately published, fol. 72 to 95.

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ries in the Light of common Justices of the Peace, they no more than any common Justices can issue Warrants merely *ex Officio*, or for Offences within their private Knowledge, being in those Cases rather Witnesses than Magistrates; but tho' this be admitted, it will not affect the present Question. The present Question is, whether the stating the Evidence be essential to the Validity of the Warrant; no Authority has been cited by the Defendant's Counsel to shew it. *Rudyard's Case* in 2 *Ventr.* 22. was indeed referred to, but upon examining that Case, it does not apply. The Commitment there was a Commitment in Execution, and therefore it was necessary in that Case to state the Evidence. It was urged farther, that the Ground of the Justices Jurisdiction, rested in the Charge by Witnesses, and if it was otherwise, every Man's Liberty would be in the Power of the Justices. The Objection deserves an Answer, and if it had not been determined before, I should have thought it very weighty and alarming; but it has been settled. Before I mention the Case where it was solemnly adjudged, I would take Notice, that neither my Lord *Coke*, Lord *Hale*, or Mr. *Hawkins*, all of them very able Writers upon the Crown Law, have considered such a Charge as is contended for to be essential. In the Trial of the seven Bishops, tho' they were committed upon a similar Warrant, their Counsel did not take the same Objection. In referring to that great Case, I am not to be understood as intending to give any Weight to the Determination of the Judges who sat upon the Bench, in that Cause; I rely only on the Silence of the Defendants Counsel, who were all of them Lovers of Liberty, and the greatest Lawyers of that Age. We have seen Precedents of Commitments returned upon *Habeas Corpus's* into the *King's Bench*, where the Warrants have been all in the same Form, and no such Objection taken; but the very Point was determined in the Case of Sir *W. Wyndham*, 3 *Vin. Abr.* 530, 535. *Stra.* 2. who was committed for High Treason generally, and not on the Charge of any Body, stated in the Commitment. 2 *Hawk. Pl. Cr.* 120. *Chap.* 17. *Sect.* 17. refers to the Case of Sir *W. Wyndham*, and says it is safer to set forth that the Party is charged upon Oath, but that is not necessary. Thus stands this Point on Authorities. The other Objection was, that the Libel itself ought to have been set forth *in hæc Verba*, but upon that Point too, we are all of Opinion that the Warrant is good. It was

Secretaries of State considered as common Justices of the Peace.

Rather Witnesses than Magistrates.

Rudyard's Case.

Necessary to state the Evidence upon a Commitment in Execution.

None of the eminent Crown Lawyers have considered the Ground of Justices of Peace their Jurisdiction to rest in the Charge by Witnesses.

The Counsel for the seven Bishops were Lovers of Liberty and great Lawyers.

Sir *W. Wyndham's Case.*

Safer to set out Party's being charged on Oath, but not necessary.

The other Objection.

The specific Cause of Detention need not be stated in the Warrant of Commitment.

Magistrate not bound to set forth the Evidence.

Evidence of a Libel partly internal and partly external.

Libel is the only Name applicable to that Offence.

The Court ought not, upon an Application for Bail, to determine the Offence.

Nature of the Offence the only necessary Rule in bailing.

Good Bail requisite of a Libeller.

Defendant's being a Member of Parliament admitted, and Court bound to take Notice of it.

urged, that the specific Cause of Detention ought to be stated with Certainty; and therefore, if a Man be committed for Felony, the Warrant must briefly mention the Species of the Felony. Now the Species of every Offence must be collected by the Magistrate out of the Evidence, but he is not bound to set forth the Evidence, he is answerable only for the Inference he deduces from it. As to a Libel, the Evidence is partly internal and partly external. The Paper itself may not be compleat and conclusive Evidence, for it may be dark and unintelligible without the *Innuendo's* which are the external Evidence. There is no other Name but that of Libel, applicable to the Offence of libelling, and we know the Offence specifically by that Name, as we know the Offences of Horse-stealing, Forgery, &c. by the Names which the Law has annexed to them. But two Reasons were urged why the Law ought to be stated. First, it was said, that without it, the Court cannot judge whether it be a Libel or not. The Answer is, that the Court ought not in this Proceeding to give any Judgment of that Sort, as it would tend to Prejudication, to take away the Office of a Jury, and to create an improper Influence. The other Reason was, that unless the Libel be stated, the Court cannot be able to determine on the Quantity of Bail. I answer, that Regard to the Nature of the Offence, is the only necessary Rule in Bailing; as to the Offence of a Libel, it is an high Misdemeanor, and good Bail (having Regard to the Quality of the Offender) should be required, but if the Libel itself was stated, we could have no other Measure of Bailing than this; besides, there has been no Case shewn to warrant this Reason, and it was not urged in the Case of the seven Bishops, but then it remains to be considered, whether Mr. *Wilkes* ought not to be discharged; the King's Counsel have thought fit to admit that he was a Member of the *House of Commons*, and we are bound to take Notice of it. In the Case of the seven Bishops, the Court took Notice of their Privilege from their Description in the Warrant, in the present Case there is no Suit depending; here no Writ of Privilege can therefore issue, no Plea of Privilege can be received: It rests, and must rest on the Admission of the Counsel for the Crown; it is fairly before us upon that Admission, and we are bound to determine it. In *Ld. Coke 4 Inst.* 24, 25. after shewing that Privilege of Parliament is conusable at Common Law, he says, that Privilege generally holds, unless it be in three Cases,
viz.

viz. Treason, Felony, and the Peace. We have not been able to have Recourse to the original Record, but in *Cotton's Abridgment*, fol. 596. you will find my *Ld. Coke* was right. The Case I would refer to is that of *William Lake*, 9th of *Hen. 6.* who being a Member's Servant, and taken in Execution for Debt, was delivered by the Privilege of the *House of Commons*; the Book adds, (and for that Purpose I refer to it;) wherein is to be noted, that there is no Cause to arrest any such Man, but for Treason, Felony, and the Peace. In the Trial of the seven Bishops, the Words "the Peace" are explained to mean "Surety of the Peace." In the Case of *The King v. Sir Thomas Culpepper*, reported in 12 *Mod.* 108. Lord *Holt* says, that whereas it is said in our Books, that Privilege of Parliament was not allowable in Treason, Felony, or Breach of the Peace, it must be intended where Surety of the Peace is desired, that it shall not protect a Man against a *Supplicavit*, but it holds as well in Case of Indictment, Information for Breach of the Peace, as in Case of Actions. In the Case of Lord *Tankerville* a few Years ago, which tho' not reported in any Law Book, is upon Record in Parliament, it was held that Bribery, being only a *constructive*, and not an *actual* Breach of the Peace, should not oust him of his Privilege; there is no Difference between the two Houses of Parliament in respect of Privilege. The Statutes of 12 & 13 *Wil. 3. c. 3.* and 2 & 3 *An. c. 18.* speak of the Privilege of Parliament in Reference not to one House in particular, but to both Houses, what then is the present Case? Mr. *Wilkes*, a Member of the *House of Commons*, is committed for being the Author and Publisher of an infamous and seditious Libel. Is a Libel *ipso Facto* in itself an actual Breach of the Peace? Mr. *Dalton* in his *Justice of the Peace*, fol. 289. defines a Libel as a Thing *tending* to the Breach of the Peace. In *Sir Baptist Hicks's* case, *Hob. 224.* it is called a *Provocation* to a Breach of the Peace. In *Lev. 139.* *The King v. Summers*, it was held to be an Offence conusable before Justices, because it *tended* to a Breach of the Peace. In *Hawk. Pl. Cor. 193. chap. 73. sect. 3.* it is called a Thing directly *tending* to a Breach of the public Peace. Now that which *tends* only to the Breach of the Peace, is not an *actual* Breach of it, is too plain a Proposition to admit of Argument. But if it was admitted that a Libel was a Breach of the Peace, still Privilege cannot be excluded, unless it requires Surety of the Peace; and there has been

In what Cases
Privilege of Par-
liament holds.

William Lake's
Case.

"the Peace"
means "Surety
of the Peace."

The King v.
Culpepper.

Lord *Tankerville's*
Case.

A constructive
Breach of the
Peace does not
oust Privilege of
Parliament.

Privilege of Par-
liament refers to
both Houses.

Libel only tends
to, is not an
actual Breach of,
the Peace.

Privilege of Par-
liament holds in
a Breach of the
Peace, unless it
requires Sureties
of the Peace.

no

Seven Bishops
Case only Prece-
dent of Libellers
being required to
give Surety of
the Peace.

Judge *Allybone* a
Papist; *Wright*
and *Holloway*
placed there for
doing Jobs.
Powell the only
honest Judge
gave no Opinion.
Seven Bishops
Case not Law.

no Precedent but that of the seven Bishops cited to shew that Sureties of the Peace are requirable from a Libeller; and as to the Opinion of the three Judges in that Case, it only serves to shew the miserable State of Justice in those Days. *Allybone*, one of the three, was a rigid and professed (a) Papist, *Wright* and *Holloway*, I am much afraid, were placed there for doing Jobs, and *Powell*, the only honest Man upon the Bench, gave no Opinion at all. Perhaps it implies an Absurdity to demand Sureties of the Peace from a Libeller; however, what was done in the Case of the seven Bishops, I am bold to deny was Law.

Privilege of Par-
liament holds
till Sureties have
been demanded
and refused.

Upon the Whole, tho' it should be admitted, that Sureties of the Peace are requirable from Mr. *Wilkes*, still his Privilege of Parliament will not be taken away till Sureties have been demanded and refused. Let him be discharged. *Easter Term 3 Geo. 3. 1763. C. P. MSS. The King v. John Wilkes, Esq.*

Both Houses of
Parliament have
resolved, that
Privilege does
not lie in the
Case of a sedi-
tious Libel.

However since the above Opinion of the Court of *Common Pleas*, the Resolutions of both Houses of Parliament have determined, that Privilege does not lie in the single Case of a seditious Libel. *Quod nota.*

CHAP. XVIII.

A F F I D A V I T S.

An Affidavit in
one Motion can-
not be read in
another.

IT was resolved in this Case, that on a Motion for an Information against *A.* an Affidavit in a Motion against *B.* cannot be read; because the Swearer cannot be prosecuted for it if false. *Michaemas Term 6 An. 1707. 2 B. 11 Mod. 141. pl. 9. The Queen v. Thetford Mayor.*

How Affidavits
must be intitled.

An Affidavit being intituled *The King v. Lewis*, it was objected there was no such Cause in Court; but the Court said, it was enough that there was a Cause below between *The King* and *Lewis*, so the Affidavit was read. *Trinity Term 12 Geo. 1726, K. B. Stra. 704. The King v. Lewis.*

(a) *Burn. Hist. O. T. 745. 3 Mod. 239.*

The Affidavits on which an Information was moved for had no Title (which was agreed to be right), but the Affidavits for the Defendant on shewing Cause were intitled *The King v. Jones*; and upon Objection to the reading them, the Court said, that there being a Rule in the *King's Bench* to shew Cause why there should not be an Information, that was a Proceeding in Court between *The King* and *Jones*, and warranted the intitling the Affidavits in that Manner. *Trinity Term 12 Geo. 1726. K. B. Stra. 704, 705. Andr. 313, 314. S. P. The King v. Jones.*

Information was moved for, and a Rule to shew Cause: At the Day fresh Affidavits were produced, Part in Confirmation, and Part introductory of new Matter; and the Question was, whether the Affidavits could be read according to the Course of the Court, it being objected, that no supplemental Affidavits could be made but in Confirmation only.

On a Rule to shew Cause against an Information, no supplemental Affidavits introductive of new Matter to be read but in Confirmation only.

The Court said, that where Affidavits are produced, Part in Confirmation, and Part introductory of new Matter, it is not a general Rule that they shall be absolutely rejected; but the Court will be pretty nice in distinguishing what is new Matter, and what is Confirmation of the old.

In Affidavits upon which the Rule was made, the Complaint was, that *A.* and *B.* and several other Persons, &c. but no Person particularly charged; these Affidavits were not produced, in order to fix the Charge upon particular Persons.

The Affidavits now offered are intirely introductive of new Matter; for the Charge in the first Affidavits being general, a general Answer would have been sufficient; but this is reducing it to a particular Charge, and therefore makes a particular Answer necessary. *Hilary Term 7 Geo. 2. 1734. K. B. 2 Kel. 178. pl. 142. The King v. Kinsaston.*

C H A P. XIX.

INFORMATIONS and INDICTMENTS.

King's Peace,
what.
May be broken
without Force,
as

THE King's (a) Peace includes good Order and Government, and that Peace may be broken in many Instances without an actual Force. 2 *Kel.* 230. *pl.* 103. as if it be an Act,

1. Against Religion.
2. Against Morality.
3. Against the Constitution.

1. Against Religion.
2. Against Morality. And
3. Against the Constitution, or Civil Government.

1. Against Religion.

Libel to reflect
on Religion, may
be a spiritual and
temporal Offence.

It is a Libel if it reflects upon Religion, that great Basis of Civil Government and Society, and it may be both a spiritual and temporal Offence.

Scandalous
Words against
Religion.

Error brought by Defendant to reverse a Judgment upon an Indictment, before Justices of Peace for scandalous Words; *That the Religion now professed was a new Religion within fifty Years, Preaching was but Prating, and bearing of Service more edifying than two Hours Preaching*: And he was thereof convicted. The Error assigned was, that this was not any Offence inquirable by Indictment, and before Justices of Peace, but only before the High Commissioners; and it was referred to the King's Attorney to consider thereof: And the Attorney (b) General certified, that it was not inquirable before them; and of that Opinion was the Court, but they would advise. *Easter Term 15 Jac. 2. 1617. K. B. Cro. Jac. 421. pl. 1. The King v. Atwood.*

Not inquirable
before Justices
of Peace.

(a) The Wisdom of the Law has stiled it *the King's Peace*, because it is His Authority that commands it, it is His Justice that secures it. The Earl of Nottingham's Speech (as Lord High Steward) on Lord Cornwallis's Trial. See *St. Tri.*

(b) Sir Henry Yelverton, *Dugd. Chron. Ser. 105. Whitw. 167.* afterwards fifth Judge of the Common Pleas. *Cro. Car. 4. Tab. Judg. to Cro. Car. and to Cro. Jac. Dugd. Chron. Ser. 106. Chron. Jur. 189.* See *Cro. Car. 2, 3. W. Jo. 63. Fortesc. Rep. 383.* N. B. This Judge is omitted in *Whitw.* and that *Camb. Brit. 474.* says he was Lord Chief Justice of England under King Charles the First.

An

An Information was exhibited against the Defendant in the Crown Office, for uttering of divers blasphemous Expressions, horrible to hear, viz. *That Jesus Christ was a Bastard, a Whoremaster, Religion was a Cheat; and that he neither feared God, the Devil, or Man.* Blasphemy.

Being upon his Trial, he acknowledged the speaking of the Words, except the word *Bastard*; and for the rest, he pretended to mean them in another Sense than they ordinarily bear, viz. *Whoremaster*, i. e. *That Christ was Master of the Whore of Babylon*, and such kind of Evasions for the rest. But all the Words being proved by several Witneses, he was found guilty.

And *Hale* said, That such kind of wicked blasphemous Words were not only an Offence to God and Religion; but a Crime against the Laws, State and Government, and therefore punishable in this Court. For to say *Religion is a Cheat*, is to dissolve all those Obligations whereby civil Societies are preserved, and that Christianity is Parcel of the Laws of England; and therefore to reproach the Christian Religion, is to speak in Subversion of the Law. *Hilary Term, 27 Car. 2. 1675. K. B. Ventr. 293. 3 Keb. Rep. 607. pl. 53. The King v. Taylor.* Blasphemy not only an offence against Religion but against Law.
Christianity Parcel of the Law of England.

There was a Special Verdict on a Libel about the Trinity, and it was not made a Doubt of in that Case. *Easter Term 10 An. 1709. 2 Stra. 790. The Queen v. Clendon.* Libel about the Trinity.

Defendant was convicted for a Libel, intituled, "*A sober Reply to the merry Arguments about the Trinity.*" *2 Stra. 789.* "Sober Reply to the merry Arguments about the Trinity."
See *Id. 416. The King v. Hall.*

Five several Informations were preferred against the Defendant by the Attorney (a) General, for publishing five blasphemous Libels wherein the Miracles of our Saviour were turned into Ridicule, and his Life and Conversation exposed and vilified. His Counsel offered to move three Matters in Arrest of Judgment. One that the Book was not writ against the Christian Religion, the other admitting it was, yet it could not be punished by the Temporal Courts, but was a Matter innocent in itself, and lawful for every Man to do. The third that the Statute of 9 & 10 W. 3. c. 32. had appointed a less punishment for this offense, than was at the Common Law, and by that Means had taken away the Punishment at the Common Law. But the second of Five Informations for five blasphemous Libels wherein the Miracles of our Saviour were ridiculed.
Stat. 9 & 10 W. 3. c. 32.
Court would not suffer it to be argued whether writing against Religion was an Offence.

I

(a) Sir Philip Yorke, see Chap. 11. fol. 24. in Notes.

Religion Part of
the Law.

An Offence to
deride the Law.

*The King v.
Taylor.*

*The King v.
Hall.*

Refused to hear
Counsel.

Mystical and
allegorical Mean-
ing.

these Points the Court said, they would not (a) suffer to be argued; for the Christian Religion is established in this Kingdom; and therefore they would not allow any Books to be writ, which should tend to alter that establishment. They observed too, that as the Christian Religion was part of the law, whatever derided that, derided the Law, and consequently must be an offence against the Law; for the Laws are the only Means to preserve the Peace and Order of every Government, and therefore whatever exposes them prevents the Peace and Order of the Government to be kept. They said the Case of *The King v. Taylor* was exactly founded upon this Reason, as it is reported in *Vent.* 293. So was the Case of *The King v. Hall*, where the buffooning the *Trinity* was held punishable by Information. This they said was a Point, that carried with it such clear Conviction in itself, that they refused to hear the Counsel give their Reasons why they should be heard to it. Upon which the Counsel began to speak to the first Point. They said, that the Intent of these Books were only to shew, that the Miracles of *Jesus* were not to be taken in a literal Sense; for as such they were not great enough to prove his Divinity; but that they were to be understood in a mystical and allegorical Meaning. But at most the Counsel observed, this Book could only be considered as striking against one received proof of his Messiahship, and not attacking Christianity in general. To the third they said, that before this Act the Court could inflict a discretionary Punishment, which might have been much greater than that prescribed by the Statute; they said that the intent of this Act might well be construed to limit the Discretion of the Court, and by that Means take from the Court that Power of passing Judgments, which they had before; now they observed, that if the Power of passing the old Judgment was taken away, the Intent of the Parliament might well be construed to be to take away the old Method of Proceeding by establishing the new one. To the first of these

(a) The Court declared they would not suffer it to be debated, whether to write against Christianity *in general* was not an offence punishable in the Temporal Courts at Common Law; they desired it might be taken notice of that they laid this Stress upon the Word *general*, and did not intend to include Disputes between learned Men upon particular controverted Points. 2 *Stra.* 834. The late Lord Chief Justice *Raymond* in delivering the Opinion of the Court said, "I would have it taken Notice of, that we do not meddle with any Differences in Opinion, and that we interpose only, where the very Root of Christianity itself is struck at." And with him agreed the whole Court. *Fitzgib.* 66.

Points

Points the Court said, they were of Opinion that the attacking Christianity in this Way was destroying the very Foundation of it; and though there were Professions in the Book, that the Design of it was to establish Christianity upon a true Bottom, by considering these Narratives in Scripture as emblematical and prophetic, the Court said, those Professions could not be credited; and the Rule is, *Allegatio contra Factum non est admittenda*. To the third Point, they observed, that this was against an established Rule, which says, that a new Law (a) instituting a new Punishment shall not take away the old one, unless it changes the Offence, and makes it of a different Nature. *Easter Term, 2 Geo. 2. 1729. Barnard. K. B. 162. 2 Stra. 834. Fitzgib. 64. The King v. Woolston.*

Attacking Christianity destroys it.

Allegatio contra factum non est admittenda.

New Law does not take away the old Punishment.

2. If it be an Act against Morality.

Morality.

Destroying Morality is destroying the Peace of the Government, for Government is no more than public Order, which is Morality. My Lord Chief Justice *Hale* used to say, Christianity was Part of the Law, *Ventr. 293.* and why not Morality too? Every immoral Act is not indictable, such as telling a Lye, or the like; but if it is destructive of Morality in general, if it does, or may, affect all the King's Subjects, it then is an Offence of a public Nature. And upon this Distinction it is, that particular Acts of Fornication are not punishable in the Temporal Courts, and Bawdy-houses are. The Court of *King's Bench* is the *Custos Morum* of the King's Subjects. *Sid. 168. pl. 29.* And upon this Foundation there have been many Prosecutions against the Players for obscene Plays, though they have had Interest enough to get the Proceedings stayed before Judgment. *2 Stra. 790.*

Government, what.

Christianity Part of the Law.

Telling a Lye not indictable.

Fornication not punishable in Temporal Courts, but Bawdy-houses are.

King's Bench Custos Morum. Prosecutions against Players for obscene Plays.

The Defendant was indicted at the Common Law for several Misdemeanors against the King's Peace, and which were to the great Scandal of Christianity, and the Cause was for that he shewed his naked Body in a Balcony in *Covent Garden* to a great Multitude of People, and there did such Things, and spoke such Words, &c. (mentioning some Particulars of his Misbehaviour, as throwing down Bottles (pist in) *Vi & Armis* among

Indictment for shewing his naked Body from a Balcony speaking Bawdy, and throwing down Bottles pist in.

(a) Lord Ch. Just. *Raymond* said it was true, where a Statute introduces a new Law and inflicts a new Punishment, it must be followed; but where an Act of Parliament only inflicts a new Punishment for an Offence at Common Law, it remains an Offence still punishable as it was before the Act; so it is in the Case of Forgery, which notwithstanding 5 *Eliz. c. 14.* remains still punishable as it was before that Statute, and with him agreed the whole Court. *Fitzgib. 66.*

Though no *Star-Chamber*, *K. B.*
Custos Morum.

Christianity but
not Morality ne-
glected.
Kept on Recog-
nizance.

Confesses Indict-
ment.

Defendant out-
lawed for publish-
ing Lord *Roche-
ster's* Poems.

Information for
publishing "*Venus*
in the Cloister,
or the Nun in
her Smock."

Punishable in
Spiritual but not
in Temporal
Court.

the People. *Keb. Rep.* 720. *pl.* 95. 2 *Str.* 791. *Fortesc. Rep.* 99.) And this Indictment was openly read to him in Court; and the Justices told him that notwithstanding there was not then any *Star-Chamber*, yet they would have him know that the Court of *King's Bench* was the *Custos (a) Morum*, 2 *Str.* 790. of all the King's Subjects; and that it was then high Time to punish such profane Actions committed against all Modesty, which were as frequent as if not only Christianity, but Morality also had been neglected. After he had been kept in Court by Recognizance from *Trinity Term* to the End of *Michaelmas Term*, the Court required him to take his Trial at Bar, but being advised, he submitted himself to the Court, and confessed the Indictment. *Michaelmas Term* 15 *Car.* 2. 1663. *K. B.* *The King v. Sir Charles Sedley*.

The Defendant was indicted for printing some obscene Poems of my Lord *Rocheſter's*, tending to the Corruption of Youth; upon which he went abroad, and was outlawed; which he would not have done if his Counsel had thought it no Libel. *Michaelmas Term* 10 *Will.* 3. 1698. *K. B.* 2 *Stra.* 790. *The King v. Hill*.

Information exhibited by the Attorney General against the Defendant *Edmund Curl*, for that he "being an Evil disposed and wicked Man, and wickedly contriving and intending to corrupt the Morals of the Subjects of this Kingdom, and to incline them to Wickedness, impiously and wickedly printed and published, and (b) caused to be printed and published a certain filthy, wicked, and obscene Libel, intituled, "*Venus in the Cloister, or the Nun in her Smock*;" (setting out the several lewd Passages,) to the bad Example, &c. And of this the Defendant was found guilty; and it was moved in Arrest of Judgment, that however the Defendant might be punishable for this in the Spiritual Court as an Offense against Morality, yet it cannot be a Libel for which he is punishable in the Temporal Court.

(a) The Court observed many Years afterwards, it was plain the Force used was but a small Ingredient in the Judgment of the Court in this Case, and if the Force was all they went upon, there was no Occasion to talk of the Court's being the *Censor Morum* of the King's Subjects. 2 *Stra.* 792.

(b) An Information for a Libel was in the Disjunctive, *viz.* wrote or caused to be wrote, and held not good. 8 *Mod.* 328.

Whatever

Whatever tends to corrupt the Morals of the People, ought to be censured in the Spiritual Court, to which properly all such Causes belong.

What tends to corrupt the Morals, must be censured in the Spiritual Court.

In the Reign of King *Charles the Second* there was a filthy run of obscene Writings, for which we meet with no Prosecution in the Temporal Courts; and since these were Things not fit to go unpunished; it is to be supposed that my Lords the Bishops animadverted upon them in their Courts.

No Prosecution in the Temporal Courts for obscene Writings in the Reign of Charles the Second.

It is not pretended, says the Attorney (*a*) General *contra*, that there is any other Way of punishing the Defendant; for if the Spiritual Court had done it, Instances might be given; and it is no Argument to say we meet with no Prohibitions; such a Way of Argument would construe them into all Sorts of Jurisdic- tions.

King's Counsel answer.

This is an Offence at Common Law, as it tends to corrupt the Morals of the King's Subjects, and is against the Peace of the King.

Offence at Common Law being against the King's Peace.

Fortescue J. owned it a great Offence, but knew of no Law by which they could punish it. Common Law is Common Usage, and where there is no Law there can be no Transgression. At Common Law, Drunkenness, or Cursing and Swearing, were not punishable; and yet he did not find the Spiritual Court took Notice of them.

Mr. Justice Fortescue thought it not punishable by Law.

To make it indictable there should be a Breach of the Peace, or something tending to it, of which there is nothing in this Case.

Reynolds J. It is much to be lamented if this is not punishable: Agreed, there might be many Instances where Acts of Immorality are of spiritual Cognizance only; but then those are particular Acts, where the Prosecution is *pro Salute Animae* of the Offender, and not where they are of a general immoral tendency; which he took to be a reasonable Distinction. Drunkenness and Swearing were punishable in the Spiritual Court before the Acts which made them temporal Offences, and in which the Jurisdiction of the Spiritual Court is saved.

Mr. Justice Reynolds seemed to think it punishable.

Probyn J. inclined this to be punishable at Common Law, as an Offence against the Peace, intending to weaken the Bonds of civil Society, Virtue and Morality.

So did Mr. Justice Probyn.

(a) Sir Philip Yorke, see Chap. 9. in Notes.

Court at last of Opinion that it was a temporal Offence, and gave Judgment for the King.

Obscene Ribaldry, without particular Reflection, not punishable at Common Law; yet Author liable to be bound to his good Behaviour.
No Libel unless it reflects upon some particular Person.

K. B. unwilling to remove Indictment for a Libel found at the Old Bailey. Recorder being reflected on, Cause for removing it.

The Court afterwards gave it as their Opinion, that this was a temporal Offence; and therefore they gave Judgment for the (a) King. *Michaelmas Term 1 Geo. 2. 1728. 2 Stra. 788. to 792. Barnard. K. B. 29. The King v. Curl.*

It seems, that a Writing full of obscene Ribaldry, without any Kind of Reflection upon any one, is not punishable at all by any Prosecution at Common Law, as Mr. Serjeant *Hawkins* has heard it agreed in the Court of *King's Bench*; yet it seems that the Author may be bound to his good Behaviour, as a scandalous Person of evil Fame. *Hawk. Pl. Cr. 195. B. 1. Chap. 73. Sect. 9.*

The Defendants were indicted, by Indictment found at the *Old Bailey*, for making, printing and publishing a false and scandalous Libel against divers good Subjects of the King to the Jurors unknown, to the Intent and Purpose to defame the said Subjects of the King, to other Subjects of the King, to the Jurors *cognitis et cognoscendis*, and to move Strife among the liege Subjects of the King, to the Jurors unknown, *cognitos, et cognoscendos, &c.* And this Indictment, after several Motions, was removed into the *King's Bench* by *Certiorari*, which *Certiorari* the Court was very unwilling to grant; but upon Information that the Recorder, before whom the Defendants were to be tried, looked upon himself as affected by the Libel, a *Certiorari* was granted. And it being tried before *Holt* Chief Justice, at *nisi prius* at *Guild-hall*, the Defendants were found guilty. It was now moved by Sir (b) *Bartholomew Shower*, Mr. (c) *Mountague* and Mr. *Hutton*, in arrest of Judgment that this Libel did not appear to be prejudicial to any one, for the Jurors did not know the Persons who were affected by the Libel, therefore they could not properly say that the Matter was false and scandalous; they did not know the Persons of whom it was spoken; nor could they say that any one was defamed by it. Wherefore, &c. Judgment

(a) The Court gave Judgment against the Defendant in the above Case contrary to the Opinion of Mr. Justice *Fortescue*, who thought the Work was rather published on Purpose to expose the *Romish* Priests, the *Fathers Confessors*, and the *Popish Religion*. *Fortesc. Rep. 100.*

(b) Recorder of the City of London. 2 *Maitl. Hist. Lond. 1206. Pref. to Tab. Ref. L. C. J. Holt's Arg. and Ref. xi.*

(c) Afterwards knighted, 2 *Ld. Raym. 1261. Solicitor and Attorney General. Whitw. List 169. 167. Baron and Lord Chief Baron of the Exchequer, 2 Ld. Raym. 1319. Whitw. List 162. 156. Bunb. 110. L. C. J. Holt's List, 98. Note (k).*

was staid until, &c. *Note*, this Libel was intituled, "*The List of Adventurers in the Lady's Invention, being a Lottery, &c.*" *Trin. Term 11 Wil. 3. 1693. Ld. Raym. 486. 3 Bac. Abr. 494. 4 Read. Stat. Law, 151. Fortesc. Rep. 98. 2 Stra. 789. 2 Kel. 230. pl. 183. 2 Barnard. K. B. 138, 166. Hawk. Pl. Cr. 195. Sect. 9. 3 Salk. 224. pl. 1. The King v. Orme and Nutt.*

"*The List of Adventurers in the Lady's Invention.*"

A writ of Error of a Judgment given at the Sessions for the County of *Middlesex* at *Hicks's Hall*, by the Justices of Peace there, upon an Indictment, which sets forth, that the Defendant, such a Day and Year, and at divers other Days, at such a Place, "was, and still is a common Bawd; and then and there, for her own Advantage and Gain, unlawfully procured certain evil disposed Persons, as well Men as Women, then and there to meet in divers Brothels, and there to commit Whoredom and Fornication, in Contempt, &c." To this Indictment the Defendant pleaded not guilty, and was convicted, and fined 100*l.* And the Judgment was reversed; for the Indictment ought to have been for keeping a common Bawdy-house. But what is charged in this Indictment is but Solicitation of Chastity, which is a spiritual Offence, and not inquirable or punishable at Common Law. And Serjeant *Broderick* relied on the difference in *Rol. Abr. 44. pl. 8, 9. See 10 Mod. 385.* where it is resolved, that for saying a Woman is a Bawd, no Action will lie at Common Law; otherwise, if you say she is a Bawd, and keeps a Bawdy-house; because that is an Offence inquirable and punishable in a Leet.

No Indictment lies for being a common Bawd.

No Action lies for calling a Woman Bawd; otherwise, to say she keeps a Bawdy-house.

It was agreed both by the Court and Counsel in this Case, that if a Person was only a Lodger in an House, yet if she made use of her Room for the entertaining and accommodating People in the Way of a Bawdy-house, it would be keeping of a Bawdy-house as much as if she had the whole House. *Trinity Term 4 An. 1703. Q. B. 2 Ld. Raym. 1197. Salk. 382. pl. 31. See Fortesc. Rep. 98, 100. 2 Stra. 791. The Queen v. Pierfon.*

Keeping a Lodging only, is keeping a Bawdy-house.

This was an Indictment in *London*, against the Defendant, for printing a lascivious and obscene Libel, intituled, "*The 15 Plagues of a Maidenhead.*" It was tried before the Lord Chief Justice *Holt*, and the Defendant was convicted; and it was moved in Arrest of Judgment, that this Offence was proper for ecclesiastical Conusance, and no Offence at Common Law; for it is only, that he designing to disturb the public Peace, published

Indictment for printing and publishing a Libel, intituled, "*The 15 Plagues of a Maidenhead.*"

Bawdy.

Bawdy. This is only general Satyr, exposing the Folly of young People, and exposes Fornication.

No Precedent to
punish the Pub-
lisher of Bawdy.

Holt Ch. Just. said, there were ecclesiastical Courts, why might not this be punished there? If we have no Precedent we cannot punish, shew me any Precedent.

No Law to pu-
nish him, Judges
cannot make
Law.

Powel J. This is for printing Bawdy Stuff not fit to be mention-
ed publicly; if there should be no Remedy in the Spiritual Court,
it does not follow there must be a Remedy here. There is no
Law to punish it, I wish there were, but we cannot make Law,
it indeed tends to the Corruption of good Manners, but that is
not sufficient for us to punish.

It is a mere So-
licitation of
Chastity.

Holt Ch. Just. This may be said to be a Temptation to In-
continence, and therefore why not (a) punishable in the eccle-
siastical Court? This tends to Bawdy as well as soliciting of
Chastity, but they do it only to get Money.

Judgment for
Defendant.

These are Matters not fit for public Examination, let there be
Judgment (b) *nisi* at the End of the Term for the (c) Defendant.
Easter Term 6 An. 1705. 2. B. *Fortesc. Rep.* 98, 99. 2 *Str.*
790, 791. *The Queen v. Read.*

3. Against the Constitution, or Civil Government.

Seditious Words
and Writing.

Under this last Head fall the following Cases of seditious
Words and Writings.

Assembly of Jus-
tices and Barons.

All the Justices and Barons of the (d) Coif, (e) *Popham* the
Queen's Attorney being present, assembled at *Serjeants Inn* in
Fleet-

(a) The late Earl of *Hardwicke* (when Attorney General) in his Argument
against *Curl*, said that this Expression of the Chief Justice, was giving a false
Reason for that sudden Opinion, for it appears there is no Instance of the Spirit-
ual Court's intermeddling, where it is reduced to Writing or in Print. 2 *Str.*
790. See 2 *Salk.* 552. pl. 15. 2 *R. Raym.* 809, 810. *Mo.* 627. pl. 862.

(b) The Prosecutor never thought fit to stir it again. 2 *Str.* 789.

(c) The late Lord Ch. Just. *Raymond* said, if this Case was to be adjudged
again, they should rule it otherwise. 2 *Str.* 792.

(d) Our Serjeants at Law are otherwise called *Serjeants of the Coif*; from the
white Lawn Coif they wear on their Heads, under their Cap, when they are
created, and always afterwards. *Cow. Dict. Tit. Coif. Spel. Gloss.* 137, 335.
Fortesc. de Laud. Leg. Angl. 116. The Coif calls the Serjeants to own themselves
Freemen from the Frowns of Judges, who sometimes browbeat Puifnes, and
gives them Liberty as Brothers of the long Robe, to speak boldly because weigh-
tily in a good Matter. *Water. Fortesc. Illustr.* 562.

(e) *Phil. Grand.* 116. *Whitw. List.* 167. *Dugd. Chron. Ser.* 97. 2 *Birch's*
Mem. 2. *Eliz.* 227. *Camd. Annal. Eliz.* 373, 461. 2 *Camd. Annal. Eliz.* 4.
Afterwards

Fleet-street, concerning a Book devised by one *Browne* containing divers seditious Matters, among which these Words were contained, among others, "Every Preacher runneth to the Queen now, as though they were to be directed by her to tarry for Re-formations to be had for Matters of the Church: If the Magistrates will agree, all is well; if they will not, they are not of the Church, and it is a Shame to tarry for them, or for a Parliament or Proclamation," &c. or to that Effect. The Question is, whether the Party be within the Danger of the Statute of 23 *Eliz. c. 2.* made against such as do advisedly and with a malicious Intent against our Sovereign Lady devise and write, print and set forth any Manner of Book, Rhyme, Ballad, Letter or Writing, containing false, slanderous and seditious Matter, to the Defamation of the Queen's Majesty; or to the encouraging, stirring or moving of any Insurrection or Rebellion within this Realm, or any her Dominions belonging to the same, &c. And

Concerning a
seditious Libel.

The libellous
Words.

Stat. 23 *El. c. 2.*
long since ex-
pired.

Afterwards Lord Chief Justice of England; *Spelm. Gloss.* 343. *Dugd. Chron.* Ser. 98. *Chron. Jac.* 177. *Camd. Annal. Eliz.* 223, 229, 231. *Whitw. List.* 139. *Tab. Judg. to Cro. Jac.* 2 *Birch's Mem.* 2. *Eliz.* 227. *Phil. Grand.* 116. *Nem. Cap. Justic. B. R. at End Dy. Rep.* *Camden* says he was *Vir censoria Severitate.* 2 *Camd. Annal. Eliz.* 55. The learned Sir *John Howles* says, "That Judges ought to be bound up by the Reasons given in Public, and not satisfy or make good their Judgment, by After-thought of Reasons. How very ill did it become the Chief Justice *Popham*, a Person of Learning and Parts, in the attainting Sir *Walter Raleigh*, of which Trial all since that Time have complained; when he gave his Opinion that the Affidavit of the Lord *Cobham*, taken in the Absence of Sir *Walter*, might be given in Evidence against him, without producing the Lord *Cobham* Face to Face to Sir *Walter*, (which was desired by him, although the Lord *Cobham* was then forth-coming) when he summed up the Evidence, he said, 'Just then it came into his Mind, why the Accuser should not come Face to Face to the Prisoner, because he might detract his Evidence, and when he should see himself must dye, he would think it best that his Fellow should live to commit the like Treason, and so in some sort seek Revenge. Which besides that it is against the Common Law and Reason, it is against the expresse Statutes of 1 *Edw. 6. chap. 12. sect. 22.* 5 & 6 *Edw. 6. chap. 11. sect. 12.* which takes Care that in Treason the Witness shall be brought Face to Face of the Person accused." *Howl. Rem. Fitzhar. Tri.* 10. Sir *Edward Coke* gives L. C. J. *Popham* the following Character, viz. "That he was a most reverend Judge, of a ready Apprehension, profound Judgment, most excellent Understanding in the true Reason of the Law, and of universal and admirable Experience and Knowledge of all Business which concerned the Commonwealth; accompanied with a rare Memory, with perpetual Industry and Labour for the Maintenance of the Tranquillity and public Good of the Realm, and in all Things (behaving) with great Constancy, Integrity, and Patience." 6 *Co. 75. a. Cro. Jac.* 166.

Seditious.

held by all, that it was a Moving of an Insurrection, and that it was seditious.

Making the
Queen's Arms
with a Text that
insinuates Ca-
lumny in a
Church.

At the said Assembly was moved by Sir *Edmond Anderson* Ch. Just. of the C. P. that it was found by Examination at the Assize held at *Bury St. Edmunds* in the County of *Suffolk*, in *Lent* last, that one caused the Arms of our Lady the Queen to be painted on a Post in the Church between two Pillars; near the Arms he procured this Sentence to be wrote, which is in the Book of the Revelation, *Chap. 3. Verse 14, 15, 16.* "And to the Angel of the Church of the *Laodiceans*, &c. I know thy Works, that thou art neither hot nor cold: I would thou wert either hot or cold: Therefore because thou art Lukewarm, &c. it will come to pass that I will spew thee out of my Mouth."

No Resolution.

What Offence this was, in which there was no Resolution. *Sav. 49. pl. 104.*

Seditious Words.

Information that the Defendant falsely and maliciously published, uttered, and proclaimed, of and concerning the Government and Rule of *England*; and of and concerning the Traitors who adjudged King *Charles* the *First* to Death, that the Government of the Kingdom, (not said of *England*) consists of three Estates; and that if a Rebellion should happen in the Kingdom, unless that Rebellion was against the three Estates, it was no Rebellion: The Jury find, that as to the Publication of the Words, (*viz.* that the Government of *England* consists of three Estates, and if a Rebellion should happen in the Kingdom, unless it was against those three Estates, it was no Rebellion,) guilty; but as to any other Words in the Declaration not guilty; and for Exception in Arrest of Judgment, it was said these Words may be intended *in mitiori (a) sensu*, that there can be no Rebellion against the King, but it must be against the three Estates, which are all united to the King, *sed non allocatur*; for by *(b) 13 Car. 2. c. 1.* it is expressed, that both not either House of Parliament cannot War against the King under any Pretence whatever; and though it be granted that there are three Estates as to making Laws, there is but one Authority as to War, and therefore all Indictments of Treason are against the Crown and Dignity, *1 Eliz. c. 1.* is to be intended only as to Laws making. The

In mitiori sensu
exploded.

*Stat. 13 Car. 2.
c. 1.*
Parliament can-
not war against
the King.
But one Author-
ity as to War.

(a) This Construction has been long since exploded. *Fitzgib. 254. 10 Mod. 197, 198. Gilb. Cas. 117. Skin. 364. Vin. Abr. 500. pl. 1. in Notes. For- tesc. Rep. 207.*

(b) This Act has been suffered to expire long since. *Ruffhead.*

Court supposing that the Words did tend to set on Foot that Position upon which the War (levied in 1641, by the two Houses against the King) was grounded, were much displeased that the Counsel would pretend to defend them, or put any tolerable Sense upon them. *Ventr.* 325. Judgment for the King; and the Defendant brought (a) Error in Parliament. *Hilary Term* 29 *Car.* 2. 1677. *K. B.* 3 *Keb. Rep.* 841. pl. 6. *Ventr.* 324. *The King v. Harrison.*

Court displeased at Counsels Defence,

Bedford's Treatise of Hereditary Right was held to be a Libel, though it contained no Reflection upon any Part of the then (b) Government. *Michaelmas Term* 12 *An.* 1711: 2. *B.* 2 *Stra.* 789. *Gilb. Cas.* 297. *The Queen v. Bedford.*

Hereditary Right held a seditious Libel.

An Information was exhibited this Term by the Attorney General against the Defendant, for printing and publishing a certain wicked, false, scandalous, seditious and malicious Libel, intituled, "The Case of the Honourable *Alexander Murray, Esq;* in an Appeal to the People of *Great Britain*; more particularly the Inhabitants of the City and Liberty of *Westminster*;" tending to asperse, scandalize, and vilify the whole Body of the *Commons* of this Kingdom in Parliament assembled, and to represent their Proceedings in Parliament as cruel, arbitrary, and oppressive; and to make it be believed as if the *Commons*, in Parliament assembled, were a most wicked, base, and degenerate Set of Persons, and had acted in their legislative Capacity in open Violation of the Constitution of this Kingdom, and had most daringly prostituted their Power, and acted in Defiance of those Laws which had been made and provided for the Security and Welfare of the Subjects of this Kingdom; and also to represent the said *House of Commons* as a Court of Inquisition; and to insinuate as if the Commitment of the said *Alexander Murray* to *Newgate* was founded in Violence and Oppression, and by that Means to arraign the public Justice and Proceedings of the said *House*, and to bring all the *Commons* of this Kingdom, in Parliament assembled, into an ill and bad Opinion, and into the utmost Hatred and Contempt with all the Subjects of this Kingdom. *Mi-*

"The Case of Alexander Murray, Esq;"

House of Commons scandalized;

their Proceedings represented as cruel, &c.

and they themselves as wicked, and having acted in violation of Constitution, in Defiance of the Law;

represented as an Inquisition; insinuated that Murray's Commitment was oppressive. Public Justice arraigned.

House of Commons brought into Contempt,

(a) It does not appear what became of the Writ of Error.

(b) A general Reflection on the Government is a Libel, though no particular Person is reflected on. 4 *Read. Stat. Law* 155.

(c) Sir *Dudley Ryder*, Knight. *Whitw. List.* 167. 2 *Stra.* 1068, 1133. afterwards Chief Justice of *K. B.* *Whitw. List.* 140.

Michaelmas Term 25 Geo. 2. 1752. K. B. MSS. The King v. (a) William (b) Owen.

Libel in the
"London Evening
Post."

England in a
miserable Con-
dition.

Constitution in
Danger.

Revolution traduced;
unconstitutional.

Settlement of
the Crown called
in Question;
the same illegal.

Revolution and
Settlement,

attended with
fatal Consequences,
Parliament scandalized.
Members perjured;
bought.
Officers and Ministers abused.

"A sixth Letter to the People of England, &c."

An Information was exhibited this Term by the Attorney (c) General against the Defendant, for printing and publishing a certain false, wicked, scandalous, seditious and malicious Libel, intituled, "The *London Evening Post*, from *Saturday, September 7, to Tuesday, September 10, 1754. N^o. 4185.*" tending to represent this Kingdom in a miserable and wretched State and Condition; and the Constitution thereof in Danger of being overturned and subverted under the present Government and Administration; and also to traduce the late happy Revolution, and to suggest that it was an unjustifiable and unconstitutional Proceeding; and also to dispute and call in Question the Settlement and Limitation of the Succession of the Crown of this Realm in the present most illustrious Family; and to represent the same as illegal and unwarrantable, and to make it be believed that the said late most happy Revolution, and the Settlement of the Crown of this Realm, as now by Law established, had been attended with fatal and pernicious Consequences to the Subjects of this Kingdom; and also to scandalize the Parliament of this Kingdom, and to represent the Members thereof as perjured Slaves, bought at the Expence of the Public for vile Purposes; and also to abuse the King's principal Officers and Ministers, and to represent them as wicked Persons, by no Means fit to be employed or intrusted by the King. *Michaelmas Term 27 Geo. 2. 1754. K. B. MSS. The King v. Richard Nutt.*

An Information was exhibited this Term by the Attorney (d) General against the Defendant, for printing and publishing a cer-

(a) It is observable that the Defendant was called *John Owen* throughout the Information.

(b) This Prosecution was a Cause of great Expectation, it being commenced at the Request of the *House of Commons*, who had voted the Case of *Mr. Murray* to be "An impudent, malicious, scandalous and seditious Libel, falsely and most injuriously reflecting upon, and aspersing the Proceedings of the House, and tending to create Misapprehensions of the same in the Minds of the People, to the Dishonour of the House, and in Violation of the Privilege thereof." An Address was thereupon presented to the King, to desire his Majesty would give Orders to prosecute the Publisher, which was accordingly done: However, the Defendant was acquitted on his Trial, which was by a special Jury, before the late Lord Chief Justice *Lee*, at *Guild Hall, London*, sixth of *July 1752*.

(c) The Honourable *William Murray*, Esq; now Lord *Mansfield*, and Lord Chief Justice of the *King's Bench. Whitw. List. 167, 140.*

(d) *Charles Pratt*, Esq; The present Chief Justice of the *Common Pleas. Whitw. List. 167, 147.*

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tain false, wicked, scandalous, seditious and malicious Libel, intituled, " A sixth Lettter to the People of *England*, on the Progress of national Ruin; in which it is shewn, that the present Grandeur of *France* and Calamities of this Nation are owing to the Influence of *Hanover* on the Councils of *England*;" tending to traduce the Revolution, and to represent it as the Foundation of all those imaginary Evils and Calamities which he the said Defendant would falsely insinuate the Subjects of this Kingdom did labour under; and also to asperse the Memory of King *William* the Third, and of King *George* the First; and to represent the public Measures which were taken and pursued during the Course of their respective Reigns as wicked, corrupt, and fatal Measures to this Kingdom; and also to asperse, scandalize and vilify the late King, and his Administrators of the Government of this Kingdom; and to make it thought that the public Affairs of this Kingdom were in a most unhappy and declining State; and that the Subjects of this Kingdom were unnecessarily and most intolerably loaded and oppressed with Taxes, Debts and Subsidies; and also to insinuate that the late King had no Concern for the People of *England*, nor any Regard for the Interest, Honour or Welfare of this Kingdom; but that the Treasure and Riches of this Kingdom were misapplied, wasted and dissipated in Support of the Electorate of *Hanover*, and his *German* Dominions. *Hilary Term* 31 *Geo.* 2. 1758. *K. B.* MSS. *The King v. Doctor John Shebbeare.*

Revolution traduced.

Memory of King *William* the Third, and of King *George* the First traduced;

King *George* the Second vilified,

Unnecessary and intolerable Load of Taxes,

Treasure, &c. misapplied; dissipated in support of *Hanover*, &c.

An Information was exhibited this Term by the Attorney (a) General against the Defendant, for printing and publishing a certain malicious, false, seditious and scandalous Libel, intituled, " The North Britain, Number XLV." tending to vilify and traduce the King and his Government, to impeach and disparage his Veracity and Honour, and to represent and make it be believed that his Majesty's most gracious Speech, delivered from his Throne to the Parliament, on *Tuesday* the 19th Day of *April* 1763, contained many Falsities and gross Impositions upon the Public; and that his Majesty had suffered the Honour of his Crown to be sunk and prostituted, and the Interest of his Subjects and Allies to be treacherously betrayed; and also to render the King and his Government contemptible and odious; and to excite Tumults, Commotions, and Insurrections; and to violate

" The North Briton, Number XLV."

tending to traduce the King's Speech;

to impeach the King's Veracity,

To render King and Government contemptible:

(a) *Charles York, Esq; Whitw. List.* 167.

and

and disturb the public Tranquillity, good Order, and Peace of the Kingdom. *Easter Term 3 Geo. 3. 1763. K. B. MSS. The King v. John Wilkes, Esq.*

The like.

The like Information was exhibited by the Attorney (a) General this Term against the Defendant, for printing and publishing, "The North Briton, Number XLV." *Easter Term 3 Geo. 3. 1763. K. B. MSS. The King v. George Kearsley.*

Publication of North Briton in Volumes.

The like Information was exhibited by the Attorney (a) General this Term against the Defendant, for publishing the said North Briton Number XLV. in Volumes. *Hilary Term, 4 Geo. 3. 1764. K. B. MSS. The King v. John Williams.*

The like.

The like Information was exhibited by the Solicitor (b) General this Term against the Defendant, for printing and publishing the North Briton, Number XLV. in Volumes. *Michaelmas Term 4 Geo. 3. 1763. The King v. John Wilkes, Esq.*

Other Cases concerning Libels digested.

I shall now proceed to digest the other Cases wherein there have been Prosecutions for Libels, which did not seem to come so properly under any of the forgoing Divisions.

A Scotch Peer capitaly convicted for writing "The humble Supplication of a great Number of the Nobility and others, Commissioners in the late Parliament; but pardoned.

The Defendant was indicted for being the Author and Contriver of a scandalous and seditious Libel, intituled, "*The humble Supplication of a great Number of the Nobility and others, Commissioners in the late Parliament*," reflecting on his Majesty and the Government, and was capitaly convicted, but pardoned. The Trial was at *Edinburgh. 3 Dec. 1634. 10 Car. The King v. John Lord Balmerino.*

Nobleman not tried by his Peers in Scotland,

By this Trial we find (which was the Reason for inserting it) that a Nobleman is not tried by his Peers in *Scotland*, but in the ordinary Courts, and by a Jury consisting of Peers and Commoners, who are always above thirteen (in this Case fifteen) and their Verdict determined by a Majority of Voices. It is observable also, that the Court first determine whether the Facts in the Indictment amount to Treason or Felony, and whether they are well laid; and afterwards a Jury is impanelled to try the Facts. Whereas in *England* the Jury take both the Law and the Fact upon themselves, and bring in a general Verdict of *Guilty* or *Not guilty*: Though, it is true, in *England* Exceptions may be taken to the Indictment before the Trial, and the Prisoner may move in Arrest of Judgment after Conviction, where any Thing

Court determines the Law,

and then a Jury the Facts.

English Jury take both Law and Fact.

(a) Sir Fletcher Norton. *Whitw. List. 169.*

(b) William de Grey, Esq; *Whitw. List. 167.*

appears illegal or insufficient on the Face of the Indictment. It is observable also, that where a Person was capitally convicted in *Scotland*, it was usual to execute him the same Day he is condemned, and not allow him Time to prepare for Death as is practised in *England*: But then the Proceedings appear to be much longer depending in *Scotland* than *England*; for this Trial of Lord *Balmerino's* began the 3d of *December* 1634, and the Jury did not bring in their Verdict till the 20th of *March* following; And lastly, It appears that the Evidence consisted of written Examinations and Depositions; and the Witnesses were not produced personally in Court, to give their Testimony in the Presence of the Prisoner, according to the Practice of the Courts of *England* in capital Cases.

Capital Convict
in *Scotland* executed
same Day
as condemned.

Proceedings
more tedious in
Scotland than in
England.

Evidence, written
Examinations and Depositions.

Witnesses not
viâ voce.

The Defendant was charged in the Indictment only with a Misdemeanor, for which he was tried and convicted, in printing a Libel, intituled, "*The Speeches and Prayers of the late King's Judges*;" and selling and uttering the same: Part of the Words laid in the Indictment being taken out of a Letter from *Cook* the Regicide to his Friend, a little before his Execution, wherein he says, "The Cause for which I am in Bonds is as good as ever it was; And I believe there is not a Saint that hath engaged with us but will wish at the last Day that he had sealed to the Truth of it with his Blood: I am satisfied it is the most noble and glorious Cause that has been agitated since the Apostolical Times, being for Truth, Holiness, and Righteousness; for our Liberties as Men and as Christians; for removing all Yokes and Oppressions: It is such a Cause, That the Martyrs would come from Heaven again to suffer for it, if they might: I look upon it as the most high Act of Justice (the Murder of the late King) that our Story can parallel, &c."

Printer, Vender,
and Publisher of
"*The Speeches
and Prayers of
the late King's
Judges*," convicted
only of a
Misdemeanor.

Brewster was a second Time indicted and convicted for printing and publishing a Libel called, "*The Phœnix; or The Solemn League and Covenant*;" in which it was declared, "That a King abusing his Power, to the Overthrow of Religion, Laws, and Liberties, which are the very Fundamentals of this Contract and Covenant, may be controuled and opposed: And if he set himself to overthrow all these by Arms, then they who have the Power, as the Estates of a Land, may, and ought to resist by Arms; because he doth by that Opposition, break the very Bonds, and overthrow the Essential of this Contract and Covenant: This may justify the Proceeding of this Kingdom, against

Printer and Publisher of "*The Phœnix; or the solemn League and Covenant*," convicted of a Libel.

against the late King, who, in an hostile Way, set himself to overthrow Religion, Parliaments, Laws, and Liberties; and that the breaking this Covenant, was a greater Sin than the breaking a Commandment." *Hilary Term 15 Car. 2. 1663. K. B. The King v. Brewster.*

Prosecutor may call Offence what he pleases.

Treason chargeable as a Misdemeanor only.

If Charge High Treason, and Evidence a Misdemeanor only,

The Jury must acquit.

Counsel formerly for a Misdemeanor.

Counsel in Treason; not in other capital Offences, unless upon a Point of Law.

Writer and Publisher of "The weekly Packet of Advices from Rome," tried and convicted of a Libel. Libellous Passage.

We may observe that it is in the Power of the Prosecutor, to call the Offence what he pleases: Though the Fact be really an Overt Act of High Treason, he may charge the Prisoner only with a Misdemeanor; nor can the Jury find it to be any thing else, though the Treason be never so evident: On the other hand, where the Prisoner is charged with High Treason, and it appears upon the Evidence, that the Offence amounts to no more than a Misdemeanor, the Jury must acquit the Prisoner, and cannot find him guilty either of Treason or Misdemeanor: It appears also, that in a Trial for a Misdemeanor, a Man might have had Counsel formerly, but not where he was charged with High Treason; though at this Day, by a late (a) Act, he may have Counsel in Treason: However in Murder, and other capital Offences, he is still denied (b) Counsel; unless where a Point of Law arises on the Frame of the Indictment, or on the Facts that are given in Evidence.

An Information was granted against *Henry Carr*, and he was this Term in *Guildhall* tried and convicted of Writing and Publishing a Book, called, *The Weekly Packet of Advices from Rome, &c.* in which, among other Things, was contained the following scandalous and libellous Passage: "There is lately found out by an experienced Physician, an incomparable Medicament, called, *The wonder-working Plaister*," truly Catholick in Operation, somewhat of Kin to the *Jesuits Powder*, but more effectual. The virtues of it are strange and various: It will make Justice deaf as well as blind; takes Spots out of deepest Treasons, more cleverly than Castle-soap does common Stains: It alters a Man's Constitution in two or three Days, more than the

(a) Stat. 7 8 & W. 3. c. 3. See *Fost. Cr. Law* 221.

(b) "There is no other good Reason can be given why the Law refuseth to allow the Prisoner at the Bar Counsel in Matter of Fact, when the Life is concerned, but only this, because the Evidence by which he is condemned ought to be so evident and plain, that all the Counsel in the World should not be able to answer it." The Earl of *Nottingham's* Speech (as Lord High Steward) on Lord *Cornwallis's* Trial, which see in *St. Tri.*

Virtuoso's Transfusion of Blood in seven Years ; is a great *Alexipharmick*, and helps Poisons, and those that use them: It miraculously exalts and purifies the Eye-sight, and makes People behold nothing but Innocence in the blackest Malefactors: It is a mighty Cordial for a declining Cause; stifles a Plot as certainly as the Itch is destroyed by Butter and Brimstone. In a Word, it makes Fools wise Men, and wise Men Fools, and both of them Knaves. The Colour of this precious Balm is bright and dazling, and being applied privately to the Fist in decent Manner, and a competent Dose, infallibly performs all the said Cures, and many others not fit here to be mentioned." *Hilary Term 31 Car. 2. 1679. K. B. 2 St. Tri. 554. The King v. Carr.*

To affront the Justice of the Nation in a Manner so gross, Affronting national Justice, though mystical-ly, libellous. though it be somewhat mystical, must always be considered as a Libel: If it be said, that the Passage was dark and unintelligible, or if any Persons were to be understood through it, they were only a few bad and inconsiderable Men; I would make use of the Words of the late Serjeant (a) *Parker*, on Doctor (b) *Sachewerel's* Trial, whose Opinion may very well pass for Law.

"In Answer to these Glosses, I might say, that if this were meant, *not* of the *bigbest* Characters and Stations, nay, though it were *true* too, the affirming this of them would be criminal, and, in the Manner he does it *bigbly* so. All subordinate Magistrates, of whatever Station, may be regularly complained of, and called to account; but the meanest are not to be traduced and libelled, nor the Government upon their Accounts." Subordinate Magistrates may be complained of, but not traduced, and libelled, nor the Government.

And again, though the Style is changed to the Ironical, yet the Arguments will appear strong and convincing. Ironical.

(c) "This is an *extraordinary Step*; that, let a Man cast never so many *Scandals* and *Reproaches* on the Government, though in never so *public a Manner*, yet if it be done by way of *Suggestion* and *Insinuation*, and the Charges not expressly *maintained* and *avowed*, there is no Crime in it, or not any *bigb* one: That is in short, *Sedition* and exposing the Government is lawful, Scandal on Government, tho' public, yet if only suggested and insinuated, not criminal. Sedition lawful if Manner guarded.

(a) Afterwards Lord Chief Justice of the Court of King's Bench; Lord Chancellor, and Earl of Macclesfield. Lord Ch. Just. *Holt's Life* 115. 2 *R. Raym.* 1309. 3 *Col. Peer. of Eng.* 493. *Gaz.* No. 4665. 2 *Burn. O. T.* 543. *Whitw. List*, 135, 139. *List of Chancellors, &c. prefixed to Chanc. Rep.*

(b) *Sachew. Tri.* 99.

(c) Same Trial *fel.* 108.

Judges not to understand what every Body else does.
Judges accused of Bribery and Injustice.

only the (a) Manner is to be taken care of. Don't do it *directly and avowedly*, for that would be dangerous; but do it by *Suggestions* that every Body will *understand*, and which will have their *full Effect*, and all's *safe*; for those who come to judge you are not to understand you, though every Body else does."

Faithful Judges accused of High Treason.

Charles the First giving up his Judges, lost all his Power.

Caution to Princes not to listen to the Clamours of a Faction against Judges and Ministers.

When the Faction could no longer blind the Judges with false and specious Tales, attested by their Knights of the Post, their next Stratagem was to employ Swarms of Scriblers, to accuse the Judges of Bribery and Corruption, and even to charge them formally with Partiality and Injustice before the Privy Council and the Parliament; whereby they hoped to deter the Judges from prying too narrowly into their Knavery, or to get these removed and others put in their Places, that would comply with their Dictates: And could they have made the Judges of *Westminster-Hall* their Tools, no Doubt but they might have supported the Credit of this, or any other Plot they were pleased to invent, and by this Means have destroyed all the true Friends of the Constitution on Pretence of their being popishly affected. This was the Game they played with such Success in the Year 1641, when every Judge, that durst appear faithful to his Prince, and the Trust reposed him, and would not submit to the Direction of the Rebels, was immediately charged with High-Treason: And King *Charles* being surrounded with a set of treacherous Courtiers, and who advised him to give up his Judges, and his best Friends to their Rage; lost all Manner of Power and influence in his Dominions in that very Instant. Those who were desirous to serve their King, found he could no longer protect them, since both the Ministry and Judges were become accountable to the Commons: But it is to be presumed, that future Princes from this Example, will be cautious how they suffer themselves to be stripped of their Authority, by the Clamours of a restless Faction, against their Judges and Ministers, who are usually attacked in the first Place, in order to make their Way to the Throne itself: On the other Hand, it is acknowledged to

(a) Mr. Justice *Powys* upon a like Occasion said, that the latter Judgments had been right in denying the Rule of taking Words *in mitiori Sensu*, because it left a Liberty for Men to defame others, provided they did it with a little Caution, and it had been known that People had taken Advice of Counsel upon a Sheet of Paper full of scandalous Words, in order to know which they might out with Safety. *Gilb. Caf. 117.*

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be the Interest and Duty of every Prince, to abandon those Ministers and Judges, he is satisfied have abused him, or his People; and even to punish their Misdemeanors himself, with the utmost Severity and Dispatch; for Men will ever form some Notion of the Master from the Servants he employs. If the Minister wants either Capacity, or Integrity, it is presumed the Prince is defective in his Intellects, or in his Concern for the Welfare and Protection of his People.

Interest and Duty of Princes to abandon Ministers and Judges, who have abused them or their People, and to punish them with Severity. Master known by his Servants. If Minister incapable or dishonest, Prince

presumed defective in his Intellects, or in his Concern for the Welfare of his People.

Upon an Information against the Defendant for publishing a Libel called "*Dangerfield's Narrative*;" he pleaded that he was, at the Time of the Publication, (a) Speaker of the (b) *House of Commons*, and, as such, had a Right to publish the Votes and Acts of the House, and that the Narrative was printed and published as Parcel of the Proceedings. The Court would not debate the Formality of such an idle insignificant Plea (as they were pleased to call it) but gave Judgment for the King. *Easter Term 2 Jac. 2. 1686. K. B. 2 Show. Rep. 471. pl. 436. Comb. 18. See Atk. Power, &c. of Parliament, &c. The King v. Williams.*

Conviction for publishing "*Dangerfield's Narrative*" as Speaker of the *House of Commons*.

An Information against the Defendant who was a Clergyman, for composing, making, writing, and publishing a scandalous, malicious, wicked, and seditious Libel upon the King and late Queen Mary, and their Government, in these Words, "*Mary's Epitaph: Here lies King James's disobedient Daughter, who was addicted, &c.*" *Hilary Term 7 W. 3. 1695. K. B. Carth. 405. 5 Mod. 163. Comb. 358. Salk. 281. pl. 8. The King v. Pain.*

"*Mary's Epitaph, &c.*"

An Information was preferred by Mr. Attorney (c) General against the Defendant for writing and publishing a certain seditious Libel, intituled, "*The Observer*," and the Observators laid in the Information were very scandalous. *Michaelmas Term 3 An. 1702. 2 B. 2 Ld. Raym. 1061. Salk. 51. pl. 14. 6 Mod. 268. The Queen v. Tutchin.*

Information granted against Writer and Publisher of "*The Observer*."

(a) It is observable that Sir *William Williams* was not Speaker of the *House of Commons*, at the Time this Case was adjudged, though he was when the Offence of which he was accused was committed.

(b) The Lord Chief Justice *Wright* asked the Defendant's Counsel, whether an Order of the *House of Commons* could justify a scandalous, infamous, flagitious Libel? *2 Show. Rep. 471. pl. 436.*

(c) Sir *Edward Northey*. *Whitw. List. 167. 2 Ld. Raym. 768, 1261, 1317.*

Tutchin well supported. Libelled the Government a long while unpunished.

People a Right to displace Ministers, dethrone Prince, &c.

Tutchin reproved and admonished by Parliament and Secretaries of State.

Charged with a Misdemeanor only, though guilty of Treason.

Drift of "*The Observer*", Treason; indemnified.

Never did seditious Libeller meet with better Fortune, or rather better Supporters, than Mr. *Tutchin*, who had arraigned the Administration of the Government, for Months and Years together, in a Daily Paper, and yet never was punished for it: Nay, he did not only tell the People, that there were mismanagements, but that they had a Right to call their Governors to account for them; to displace the Ministers, and even dethrone their Prince, and transfer their Allegiance to whom they pleased, when they did not approve the Administration; For this he had been reproved by the Parliament, and by the Secretaries of State, and admonished to have a Care how he published such treasonable Papers: But still he went on, and it was near two Years before he was prosecuted at all for them, and then only charged with a Misdemeanor, though he was certainly guilty of Treason, if conspiring the Destruction of his Sovereign, and inciting the People to depose her, and set up another if she did not alter her Ministry, was Treason. This was the perpetual Drift of his Papers; which he durst not have published, if he had not been in a Manner, insured of Indemnity, from those who put him upon writing them, furnished him with Materials, and, probably were the real Authors of many of them.

The Observer, *Defoe*, and a numerous Tribe of Libellers, the Tools of Faction, did not a little contribute to the Change of the Ministry in Queen *Anne's* Reign, and their Masters in Gratitude for the Service they had done, screened them from the Punishment they deserved.

For it is amazing, when the *Observer* had plainly threatened, that the People would depose her Majesty; and told her in Print, that they had a Right to do it, if they did not change Hands, that he should escape unpunished. As to the Flaw in the Pleadings, of a Discontinuance of Process, which brought him off (a) after his Trial; I verily believe, as the Attorney General said in Court, that it was done by the Direction of some of his great Friends on Purpose. However, this could not have saved him long; the Prosecution would have been revived, and he would infallibly have been punished, had not his Friends soon after come into Play, the Attorney General, and all his Prosecutors been displaced, and he secured by the Countenance and Protection of the Ministers he served.

(a) See *Chap.* 20. and *Preface*.

Information was brought to have Judgment for a Libel, called, *The Country Parson's Advice to my Lord Keeper*. The Judgment was regularly signed, but the Defendant did not move in Arrest of Judgment within the four Days; and the Court doubted whether they could hear Counsel, this being in a criminal Cause, the Court ordered Counsel to speak to this Point. But afterwards the Attorney (a) General consented they should take their Exceptions, which they accordingly did, and they were all overruled. *Easter Term 5 An. 1706. 2. B. 11 Mod. 78. pl. 12. The Queen v. Drake.*

"The Country Parson's Advice to my Lord Keeper."
Quere. Whether Defendant can move in Arrest of Judgment after the four Days, in a criminal Cause.

Information for writing a scandalous Libel, intituled, "*Mercurius Politicus*", containing several libellous Matters; the principal Scandal (b) Mr. Solicitor General said, was, *That the late Revolution was the Destruction of the Laws of England*; if the Jury upon a Special Verdict find the Substance, it is sufficient to make it a Libel, though there be a (c) Variance, especially if the Variance be immaterial. *Trinity Term 5 An. 1706. 2. B. 11 Mod. 86. pl. 5. The Queen v. Doctor Brown.*

Substance found. Immaterial Variance.

A Rule was made upon the Defendant to shew Cause why an Information should not go against him for a Libel, made upon one Mr. Carter a Justice of Peace in *Oxfordshire*, which insinuated that Mr. Carter had lately forsworn himself in an affidavit. And the Cause that he shewed was, that the Fact contained in the Libel was true; and therefore he hoped the Court would not allow him this summary Way of Proceeding, but leave him to his Indictment or Action upon the Case. The Chief (d) Justice said in all Cases Informations for Libels go, unless you can shew the Court some probable Cause for them to believe you did not publish it. Now if you had denied it, it would have signified nothing; for then affidavit stands against affidavit; therefore the Information shall go, that the Fact may be tried. And Judge Fortescue said, that it would be a strange Thing if a Man should be allowed to justify, when an Informa-

An Information granted for insinuating that a Justice of Peace was forsworn.

Libel true.

Informations for Libels go in all Cases, unless the Publication denied.

Affidavit against Affidavit.

Strange to justify before Information, when you cannot after.

(a) Sir Edward Northey. See fol. 75. in Notes.

(b) Simon Harcourt. *Whitw. List.* 169. 2 *R. Raym.* 1261. afterwards Lord Keeper; and Lord Chancellor; *Whitw. List.* 135. *Burn. Hist. O. T.* 553. 2 *R. Raym.* 1317. *List of Chancellors, &c. prefixed to Chanc. Rep.* and lastly Viscount Harcourt. 4 *Col. Peer Eng.* 246.

(c) See Preface.

(d) Sir John Pratt. *Whitw. List.* 139; *Sira.* 86. Note; He was Father to the present Chief Justice of the Common Pleas. L. C. J. Holt's *Life* 36. Note (w.)

tion is prayed against him, and should not be allowed to justify in the Information itself, when it is gone; accordingly the Information was granted. *Easter Term 13 Geo. 1727. Barnard. K. B. 13. The King v. Dormer.*

For charging a public Company with getting 100,000 l. under the Credit of their Seal.

Motion was made for an Information for publishing a Libel upon the *York Buildings Company*, in an Advertisement put into the *Daily Post*, on *Tuesday* the 18th of *February*, by charging the Company with raising the Value of their Stock, by getting 100,000 l. under the Credit of their Seal, accordingly a Rule was made to shew Cause. *Hilary Term 5 Geo. 2. 1732. 2 Barnard. K. B. 114. The King v. Nutt.*

Information granted for publishing a Paragraph in a News Paper concerning an Action depending in a Court of Justice.

On Rule to shew Cause why an Information should not be granted against the Defendant for a Libel, Mr. *Fazakerly* said, that the Fact was, that the Defendant had brought an (a) Action against one *Bankcroft*, for maliciously causing it to be printed in the News that he was guilty of Felony, and for procuring him to be carried before the Lord Mayor of *London* on the Suspicion of it. In that Action the present Defendant recovered 1100 l. Damages; and upon this he put it into the News, That *Bankcroft* had conspired to charge him with this Felony; that in Vindication of his Character he had brought an Action against *Bankcroft* for so doing, and had recovered 1100 l. Damages against him. Mr. *Fazakerly* observed, that every Word contained in this Advertisement was true; and though the Truth of it could not be justified in Pleading, yet he submitted it, that it was a Reason why the Court should not interpose, but leave the Party to his ordinary Remedy: Accordingly Mr. (b) *Strange*, who was of the same Side, observed, that the Court was of this Opinion in the Case of *The King v. Bickerton*, which see *fol.* But Mr. *Fazakerly* carried it even farther, and submitted it, that the Advertisement was no Libel at all, nor punishable in any Manner whatsoever. He said, it is well known, that when a Verdict is obtained against a Man for lying with another's Wife, such Piece of News is constantly put in the Papers, yet an Action for the Scandal was never attempted to be brought. But the Court said, that the present Advertisement has falsely represented the Fact; for *Lofeild* did not

Libel true. Truth not to be justified.

The King v. Bickerton. Advertisement, no Libel. Verdict for Crim. Con. usually inserted in the News Paper.

Advertisement false.

Conspiracy has infamous Judgment.

(a) See *Fol. 14.* this Action set out at large.

(b) Afterwards King's Counsel, Solicitor General. 2 *Str.* 1068. *Whitw. List.* 169. *Recorder of London.* 2 *Maitl. Hist. Lond.* 1206. 2 *Str.* 1176. Master of the Rolls, *Whitw. List.* 164. Pref. to Tab. Ref. to L. C. J. *Holt's Arg. and Ref.* xi.

bring his Action for a Conspiracy, but for *Bankcroft's* maliciously charging him with Felony, and a Conspiracy requires an infamous Judgment. They said farther, that they well remembered, that this Advertisement was published just before the Trial, and it might be of dangerous Consequence to allow of such Practices, which might tend to influence Juries. Judge *Lee* said too, that the Court was of the same Opinion as to this last Point in the Case of the *King v. Chambers*; accordingly the Rule was made absolute. *Easter Term 5 Geo. 2. 1732. 2 Barnard. K. B. 128. The King v. Lofeild.*

Advertisement
inserted just be-
fore Trial,
might influence
Juries.

*The King v.
Chambers.*

An Information was prayed for publishing a Paper containing an Account of a Murder on a *Jewish* Woman and her Child, by certain *Jews* lately arrived from *Portugal*, and living near *Broad-street*, because the Child was begotten by a Christian; and the Affidavit set forth, that several Persons mentioned therein, who were recently arrived from *Portugal*, and lived in *Broad-street*, were attacked by Multitudes in several Parts of the City, barbarously treated, and threatened with Death in case they were found Abroad any more; and it was objected, that no Information could be granted in this Case, because it did not appear who in particular the Persons reflected on were; but by the Court, Admitting that an Information for a Libel may be improper, yet the Publication of this Paper is deservedly punishable in an Information for a Misdemeanor, and that of the highest Kind; such Sort of Advertisements necessarily tending to raise Tumults and Disorders among the People, and inflame them with an universal Spirit of Barbarity against a whole Body of Men, as if guilty of Crimes scarce practicable, and wholly incredible. *Trinity Term 5 Geo. 2. 1732. K. B. 3 Bac. Abr. 494. 2 Kel. 230. pl. 183. 2 Barnard. K. B. 138, 166. The King v. Osborne.*

Information
granted for a
Misdemeanor,
though refused
for a Libel.

On a Rule to shew Cause why an Information should not go against him for a Libel upon Mr. *Pike*, who was a Custom-house Officer, by which he exposed him for being cast in six Informations: Mr. *Strange* said, that on the Rule which was obtained for shewing Cause, Mr. *Pike* had made Affidavit that he was the Man that was cast in these Informations, by Reason of which, he did believe that he was the Person who was exposed. But Mr. *Strange* submitted it, that as Mr. *Pike* had by this Affidavit ascertained himself to be the Person exposed; so he had shewn by it, that there was sufficient Reason for exposing him, for which reason he hoped the Rule for the Information should

For reflecting on
a Person's being
cast at Law.

should be discharged, and the Party left to his ordinary Remedy. And he remembered the same was done in the Case of *The King v. (a) Bickerton*, and in the Case of *The King v. (b) Beharrel*. But the Court made the Rule absolute in the present Case notwithstanding. *Michaelmas Term 5 Geo. 2. 1732. 2 Barnard. K. B. 84. The King v. Purfore.*

For printing in the *York Journal*, that an Alderman had told a Lie.

An Information was prayed against the Defendant, for printing in a News Paper, called the *York Journal*, that *Richard Thompson*, an Alderman of *York*, and a Justice of Peace, was "scandalously guilty of telling a Lye in divers Companies," viz. that the said *Staples* had asked Mr. *Thompson's* Pardon for publishing in the same News Paper, that he (Mr. *Thompson*) was married to one Mrs. *W.*

No Action.

Nothing tends more to a Breach of the Peace than a Lye.

If the Word Lye had not been used, no Information.

On the other Side it was argued, that this Charge doth not affect Mr. *Thompson* in his Office; nor is there any Thing of Malignancy in it, it being only an uncourtly Manner of expressing that *Thompson* had spread about falsely, that *Staples* had asked his Pardon, &c. and for publishing this there seems to have been a sufficient Provocation. Besides an Action will not lie for these Words, and consequently no Information ought to be granted.

But the whole Court were clearly of Opinion that the Words in the principal Case were libellous; nothing tending more to a Breach of the Peace, and to Bloodshed, than the Word (Lye), as nothing else (as *Probyn* Just. said) can be answered to it. But (by *Lee C. J.*) if the Defendant had only denied his having asked Pardon of *Thompson*, though this would be charging him with saying an Untruth, it would not have been a sufficient Ground for an Information.

Information, because no Action.

Words spoken of a Magistrate libellous, when not of a private Person.

Waldron's Case.

And (by *Page* Just.) an Information ought the rather to go in this Case, because no Action lies. And it is also an Aggravation, that these Words are spoken of a Magistrate; for Words spoken of a Magistrate may be libellous, when they are not so in the Case of a private Person; and he cited to this Point Sir *Lionel Waldron's Case*, who was a Justice of Peace, and brought an Action for being called Papist; and it was held to be maintainable, because the Words were spoken of a Magistrate, although it would not have been so in the Case of another Person: The Court therefore granted an Information, *Trinity Term 11 Geo. 2. 1738. K. B. Andr. 228. The King v. Staples.*

(a) See the Case at large in *Fol.*

(b) See the Case at large in *Fol.*

Motion

Motion by the Solicitor (a) General for an Information against the Defendant, for publishing in one of the News Papers, an Affidavit, by a Woman, of Bastardy upon the Defendant, sworn before Sir *William Billers*, without its having been read by her. And this Motion was founded on an Affidavit only of one Person, that the Defendant confessed to him the Publication of the said Affidavits. On the other Side it was sworn by the Defendant, that he never confessed the Publication; but he did not deny the Fact itself.

For an Affidavit inserted in the News Paper.

The whole Court were clearly of Opinion, that the Publication of these Affidavits, though no scandalous Reflections are made upon the Case, is punishable, especially as they tend highly to defame a Magistrate.

Publication of Affidavits, tho' no scandalous Reflections, punishable.

And therefore, though it was strongly objected to the Motion by Mr. (b) *Lloyd* and Mr. (c) *Denison*, that the Confession upon which alone it is founded, is absolutely denied, yet as the Publication itself is not denied, the Information was granted, *Easter Term 12 Geo. 2. 1739. Andr. 384. The King v. Sharpe.*

An Information was granted this Term against the Defendant, for composing, printing and publishing in the *Critical Review*, for *May 1758*, a Libel on Admiral *Knowles*, tending to traduce, defame, and vilify the Character, Abilities, and Behaviour of the said Admiral *Knowles*, and to render him ridiculous and contemptible in the Eyes of the King and People; and to insinuate, and cause it to be believed, that the said Admiral *Knowles* wanted Courage, Knowledge, Resolution, and Veracity; and that he had sacrificed the Blood, Treasure, and Honour of the Kingdom, to ridiculous Projects of his own forming; and also to cause it to be believed, that the said Admiral was a Person of a conceited, obstinate, mischievous, tyrannical, and incendiary Disposition. *Trinity Term 32 Geo. 2. 1759. K. B. MSS. The King v. Doctor Smollett.*

Libel on Admiral *Knowles*;

tending to traduce his Character, and to render him ridiculous; to insinuate that he wanted Courage, &c., that he had sacrificed the Blood &c. of England; that he was conceited, &c.

The Defendant was indicted for sending to the Honourable Lady *Caroline Fox*, Wife of the Right Honourable *Henry Fox*, Esq; (now Lord *Holland*) one of his Majesty's Privy Council, a certain scandalous Paper Writing, intituled, "The Case of the Orphan

Libel on Lord and Lady *Holland*.

(a) Sir *John Strange*. 2 *Stra.* 1068. *Whitw. List.* 169.

(b) Afterwards Solicitor General. *Whitw. List.* 169. and Baron of the *Exchequer*. *Whitw. List.* 162.

(c) Late second Judge of the Court of King's Bench. *Whitw. List.* 144. 2 *Stra.* 1161.

Tending to disturb Peace of Lord Holland: to put him in Fear of his Life; to extort Money.

Information for accusing an innocent Person of Murder in print.

Libel on the Earl of Clanricarde, in the Gazetteer;

tending to deprive him of his good Name;

to bring him into Contempt; to destroy the Affection between him and his Wife;

to destroy his and his Family's Happiness; to render him odious;

and Creditors of *John (a) Ayliffe*, Esq; for the Opinion of the Public, with an *Addenda* of interesting Queries for the Answer of those it concerns: The whole impartially stated, and indisputably authenticated from Originals—*Homo Vulpes Homini*.—*Britain* hath its Bashaws. Printed for the Author *Thomas Bonell*, in whose Hands the Vouchers may be seen;" tending to disturb the Peace and Happiness of the said *Henry Fox*, and to put him in fear of his Life and Character; and to extort Monies to himself, the said Defendant, from the said *Henry Fox*. Hilary Term 1 Geo. 3. 1761. K. B. MSS. *The King v. Thomas Bonell*.

Rule absolute for an (*b*) Information against *Thomas Holland*, for writing a Libel on Mr. *Willy (c) Sutton*, in a Pamphlet intitled, "A most circumstantial Account of that unfortunate young Lady Miss *Bell*, otherwise *Sharpe*." Easter Term 1 Geo. 3. 1761. K. B. MSS. *The King v. Holland*.

An Information was granted this Term against the Defendant, for printing and publishing a Libel in the "Gazetteer" of *Wednesday, February 18, 1761*, "Extract of a private Letter from *Dublin, Feb. 3*. Last Week the Right Honourable the Earl of *Clanricarde* was married at Saint *Mary's* Church to Madam *Carolina*, a celebrated Dancer belonging to the Theatre in *Smock Alley*, and last *Saturday* they appeared in the Boxes at *Crow Street* Theatre; she had Jewels on computed at upwards of 3000 *l*." tending to scandalize *John Smyth de Burgh* Earl of *Clanricarde*, in the Kingdom of *Ireland*, and to deprive him of his good Name, Fame, Character, Credit, and Reputation, and to bring the said Earl into Hatred and Contempt among his Neighbours, and all other Persons knowing him; and also to molest, disturb, and destroy that cordial Love and Affection which always subsisted between the said Earl and *Hester* his Wife, Countess of *Clanricarde*, from the Time of their Marriage; and also to molest the Domestic Peace of the said Earl and his Family, and thereby to render the said Earl odious and contemptible in the Eyes of the World;

(*a*) He was hanged at *Tyburn* for Felony and Forgery.

(*b*) The Information was never filed.

(*c*) This Gentleman was tried, for the Murder of Miss *Bell*, at the *Old Bailey*, on *Friday, 27 Feb. 1761*. 1 Geo. 3. and was most honourably acquitted; for the Jury even declined giving the Court the Trouble to sum up the Evidence. It is observable, that on Mr. *Sutton's* thanking the Judge (the late Mr. Justice *Noel*) for his Candor and Justice, his Lordship told him, "The Jury were his Judges, and not he." See *Lawy. Mag.* 71, 220.

and

and also to insinuate, and cause it to be believed and thought, that the said Earl had been guilty of the Crime of Bigamy. *Trinity Term 1 Geo. 3. 1761. K. B. MSS. The King v. Charles Say.* to insinuate that he had been guilty of Bigamy.

The like Information was filed against the Defendant the same Term, for printing and publishing the above libellous Paragraph in the "*London Chronicle.*" *K. B. MSS. The King v. John Wilkie.* Same Libel in "London Chronicle."

An Information was filed this Term by the Attorney (a) General against the Defendant, for writing, printing and publishing a prophane and blasphemous Libel, intituled, "Modest Remarks on the Bishop of London's several Discourses preached in the *Temple Church*, and lately published in two Volumes *Octavo*, in a Letter to his Lordship, with a Postscript; containing Dr. *Thomas Sberlock's Creed*, faithfully extracted from his own Writings, by *Philotheos. 1 Thes. v. 21. Prove all Things, hold fast that which is good;*" tending to vilify and subvert the Christian Religion, and to (b) blaspheme our most Blessed Lord and Saviour Jesus Christ, and to cause his Divinity to be denied; and to represent him as an Impostor, and to scandalize, ridicule, and bring into Contempt his most Holy Doctrine, Life and Miracles, and also to cause the Truth of the Christian Religion, and the Matters contained in the Holy Scriptures, to be disbelieved and totally rejected, by representing the same as spurious, fictitious, and chimerical, and as a gross Piece of Forgery and Priestcraft, and thereby to weaken, enervate, take away, and destroy their Force, Influence, and Authority; and also to prejudice, poison, and infect the Minds and religious Principles of the People, by propagating and dispersing amongst them most impious and wicked Opinions concerning the Truth of all revealed Religion in general, to the endangering of the public Peace, State, and Government of this Kingdom. *Hilary Term 29 Geo. 2. 1756. K. B. MSS. The King v. Jacob Ilive.* A prophane and blasphemous Libel; tending to subvert the Christian Religion; to cause Jesus Christ to be denied; to ridicule Scriptures, to cause them to be disbelieved, and rejected; to destroy their Authority; to prejudice the religious Principles of the People. by propagating impious Opinions of the Truth of revealed Religion.

An Information was exhibited this Term by the Attorney (c) General against the Defendant, for writing, printing and publishing a certain malignant, prophane, and blasphemous Libel, intituled, "The Free Inquirer;" tending to (b) blaspheme Almighty God, and to ridicule, traduce and discredit His Holy Scriptures, Tending to blaspheme God, and ridicule the Pentateuch;

(a) See *Folio 68. Note [d].*

(b) This Case ought to have come in fol. 59. under the Head, 2. against Religion.

(c) *Charles Yorke, Esq; Whitw. List. 167.*

Moses an Impostor;
sacred Truths
in Pentateuch
false;

to shake the
Christian Reli-
gion.

Information
against the Prin-
ter and Publisher
of the above
Libel.
The like.

Libel on Mr.
Kent, concern-
ing the Cock-
Lane Ghost, and
accusing him of
Murder;

tending to tra-
duce his Cha-
racter;
that the said
Kent had artfully
procured one
Frances Lynes's
Will to be made,

and disputed.
Suspensions raised
concerning her
Death.
Reported in
News Paper, that
her Ghost haunt-
ed one Parson's
House.

Information a-
gainst Printer of
the above Libel.

and particularly the Pantateuch; and to represent, and cause it to be believed, that the Prophet *Moses* was an Impostor, and that the sacred Truths and Miracles recorded and set forth in the Pentateuch aforesaid were Impostures and false Inventions, and thereby to diffuse and propogate, irreligious and diabolical Opinions in the Minds of his Majesty's Subjects, and to shake the Foundations of the Christian Religion, and of the civil and ecclesiastical Government established in this Kingdom. *Hilary Term 2 Geo. 3. 1762. K. B. MSS. The King v. Peter Annett.*

The like Information was exhibited the same Term against the Defendant, for printing and publishing the above Libel. *K. B. MSS. The King v. James Dixwell.*

The like Information was exhibited the same Term against the Defendant, for publishing the above Libel. *K. B. MSS. The King v. Edward Cabe.*

An Information was exhibited this Term against the Defendant, for composing, printing and publishing, in a certain News Paper, called, "The Royal Chronicle," a Libel, intituled, "An authentick Narrative of several Particulars relating to the Death of Miss *Frances Lynes*, whose Ghost is supposed to have haunted an House in *Cock Lane, West Smithfield*, for many Nights past;" tending to traduce, scandalize, and vilify the Character and Reputation of one *William Kent*; and to represent, and cause it to be believed, that the said *William Kent* had, by artful Means and Contrivances, obtained and procured the last Will and Testament of the said *Frances Lynes*, Spinster, since deceased, to be made, and unjustly to cause the Validity of the said Will to be disputed and called in Question; and also to raise groundless Suspensions concerning the Death of the said *Frances Lynes*; and also to cause a false, scandalous, and infamous Report, raised and propogated by Means of public News Papers, that the Spirit or Ghost of the said *Frances Lynes* haunted the House of one *Richard Parsons* in *Cock (a) Lane*, to be believed and credited, to injure and oppress the said *William (b) Kent*. *Easter Term 2 Geo. 3. 1763. K. B. MSS. The King v. Robert Browne.*

The like Information against the Defendant, for printing and publishing the above Libel in the same News Paper, was granted the same Term. *The King v. Israel Pottinger.*

(a) In the Information against *Pottinger* it is said only in *West Smithfield* generally.

(b) In the Information against *Pottinger* it is *Hunt*.

An

An Information was exhibited this Term against the Defendant, for composing, printing and publishing a defamatory Libel, *viz.* "Advertisement: Shortly will be published, and generously given *gratis*, for the Benefit of that extensive Family (now in the utmost Distress) the Family of the *Wrongheads*, of *Wronghead-Hall*, in the County of *Suffolk*. A Letter to the *wrong* Honourable Mr. *President Upstart*; giving a full and particular Account of the Origin of a late *milicious* Quarrel. The first *wrongbeaded* Cause of his *Wrongship's* taking Umbrage. His *Wrongship's* private Views miscarry. The Dicipline Doctor's Prescription read in Public: It is taken and brought up again. The Shame and Woe that has already arose from young 'Squire *Wronghead's* Obstinacy; a Surmise how much more may; he alone answerable; his *military* Exploits. Mr. *President Wrongship's* sanguine Expectations miscarry. The young 'Squire's secret Cause for Disobedience, known only to himself and one more. Some Account of an old Song sung at a late Camp; the Offence it gave, and why. The Downfall of a Major, and the Upstart of a Captain; shewing how one Man may steal an Horse with more Safety, than another look over an Hedge. Some Notice of a Letter from Camp, giving an Account of a *wrong* honourable Entertainment: The Ingratitude of the Writer. A new Method (much approved) of separating Wine by a Piece of Chalk. How to know Port from Claret at a certain Table without tasting it. A Fray among the Grave Stones. Four Challenges, and no Bloodshed! With a curious Plate and References of a new invented Piece of Ordnance, weighing only four Pounds! Made without either Iron or Brass: The Whole illustrated with serious and humorous Remarks: To which will be annexed, some singular and striking Essays and Letters that have appeared in the *St. James's Chronicle*, in the Years 1761 and 1762; one of which deprived a Gentleman of the *wrongbead* Family of seventeen Shillings and six Pence *per* Day, because he would not fight no more than they. By a disbanded *Militia* Man without an Head, but in Possession of a very good Tail-piece, *N. B.* To be Sold or Let, a new erected Mansion House, known by the Name of *Wronghead Hall*, with a Park and Out-houses, fit for a Man of Rank and Honour, it being very near a Blacksmith's Shop and a Church; great plenty of Game; but unfortunately, it is not the Manor House: Enquire at Admiral *Vernon's* Head, in *Piss-pot Lane*. The only Reason the present Possessor parts with it is, that the Air is too keen for

Libel on Lord
Orwell.Libellous Matter
set out.

the Gout, and the Situation rather too near a Powder Magazine :
Query, If a Man be proved guilty of premeditated and wilful Perjury, can any set of People be so mean (when thoroughly convinced of his Guilt) to appoint such a Villain to represent them upon any Occasion, without subjecting themselves to be considered Encouragers and Promoters of a Crime the most impudent, and the most infamous? Surely if such a Representative should be made Choice of, they will shew his Face only, on the Day of Election, through a round Hole, instead of clapping his A—e upon a Cushion ;” tending to traduce, scandalize, and defame *Francis Vernon*, Esq; Baron *Orwell* of the Kingdom of *Ireland*, and to render him ridiculous and contemptible in the Eyes of the King and the Subjects of this Realm ; and to reproach and vilify his Conduct and Behaviour upon the Trial of one *William Lynch*, Esq; a Captain in the Eastern Battallion of the *Suffolk* Militia ; and by wicked and artful Insinuations and Allusions, to represent, suggest, and create a Belief that the said Baron *Orwell* wanted Courage, and that he had greatly misbehaved himself upon the said Trial of the said *William Lynch*, and that he was guilty of the Crime of premeditated and wilful Perjury ; and also unjustly to prejudice the said Baron *Orwell* in the Esteem and Opinion of the liege Subjects of this Realm, and particularly of such as had a Right to vote in the Election of a Person to serve as a Burgess for *Ipswich*, and thereby to prevent the said Baron *Orwell* from being elected to serve as a Burgess for *Ipswich* in the present Parliament of this Kingdom. *Hilary Term 3 Geo. 3. 1763. K. B. MSS. The King v. Philip Thicknesse*, Esquire.

Tending to traduce *Ld. Orwell*.

to reproach his Conduct as President of a Court Martial ;

to insinuate that he wanted Courage.

That he was guilty of Perjury, to prejudice him

among the *Ipswich* Electors, to prevent his being elected their Member.

Information against the Printer and Publisher of “ An Essay on Woman ;” tending to vitiate Morals, to introduce Debauchery, &c.

to blaspheme God, and ridicule our Saviour.

An Information was exhibited this Term by the Attorney (a) General against the Defendant, for printing and publishing a certain malignant obscene and impious Libel, intituled, “ An Essay on Woman ;” tending to vitiate and corrupt the Minds and Morals of his Majesty’s Subjects ; and to introduce and diffuse amongst the People a general Debauchery and Depravity of Manners, and a total Contempt of Religion, Modesty, and Virtue ; and also to blaspheme Almighty God, and to ridicule our Blessed Saviour, and the Christian Religion. *Hilary Term 4 Geo. 3. 1764. The King v. John Wilkes*, Esq.

(d) *Sir Fletcher Norton. Whitw. List. 167.*

An Information was exhibited this Term by the Attorney General against the Defendant, for printing and publishing a Libel, intituled, (in the *French* Language "Lettres, Memoires, & Negociations particulieres du Chevalier D'Eon, Ministre plenipotentiaire de *France*, aupres du Roi de la *Grande Bretagne*; avec M. M. Les Ducs De *Praslin*, De *Nivernois*, De *Sainte Foi* and *Regnier De Guerchy* Ambassadeur Extraordinaire," &c. &c. &c. Which said Title being translated into the *English* Language, means, "Letters, Memoirs, and particular Negociations of the Chevalier D'Eon, Minister Plenipotentiary of *France* to the King of Great

Information against the Defendant, for printing and publishing a Libel in *French*, on the *French* Ambassador;

(a) Sir Fletcher Norton. *Whitw. List.* 167. This seems a rare Instance of an Information being filed in the Name of the Attorney General, when the Prosecution is carried on at the Instance and Expence of the Party; as this was of the Count *De Guerchy*; otherwise it is usually filed in the Name of the King's Coroner and Attorney, who is at present the worthy and learned *James Burrows*, Esquire.

(b) The principal libellous Paragraphs were the following ones, viz. I have met with since the Departure of the D. *de N.* Villanies, Sordidness, and Tricks of every Species, and in every Kind.

The C. *de G.* from the Moment of his Arrival, commenced towards me Enormities, which he stiles his good Proceedings, he hath unveiled his Haughtiness, his Menaces, his shocking Deeds and Actions, as well with respect to me, as to my Relations and Friends in *London*.

He hath employed all his Credit, and that of his Friends, to cause my Admittance at the Court of *Versailles* and that of *London* to be forbid me, from the just Fear he has lest Truth should approach the Throne, and Justice be rendred to Innocence oppressed.

He has endeavoured to take away my Papers by Stratagems, he has attempted to seduce Persons to steal them away by Subtilty; he who corrupts, is already corrupted; and he who buys others, what Price may he himself be estimated at?

He believes that I have betrayed the State because I have said that he did not know how to write; does he look upon his Ignorance as a Secret of State? The D. of P. hath not only said it, but hath even written it; and does not all the World, who receive Dispatches, Letters, or Answers from this Ambassador Extraordinary, perceive it?

Because I have neither the Riches, nor the Credit, nor the Honours of the Count *de G.* he claimed to dispose, at his own Will, of my Youth, my small Abilities, and my Inclinations: To speak properly, he wanted to treat me as a Slave, who could not live and breathe without his Permission.

All these Facts (alluding to certain Facts mentioned in the Libel) will serve to prove that C. *de G.* hath more Sowerness than Haughtiness, more Haughtiness than Grandeur, more Attachment to Money than Liberality, more hard Heartedness than Pride, more Obstinacy than Firmness, and more Incapacity than all. Not knowing how to write himself, he has made use of Writers attached to him very ill instructed, and of very bad Credit.

The Court is ignorant of my Recall; The C. *de G.* caused these Letters for my Recall to be forged on the 4th of *October*, in the Evening, by the Fire-side of M. *de Praslin*.

Britain,

tending to as-
perse the Ho-
nour, &c. of the
*French Ambaf-
fador* ;
to arraign his
Conduct as Am-
baffador ;

to violate Am-
baffadors their
Protection ;

had oppreffed
Defendant, and
his Relations
and Friends ;
infynuated
*French Ambaf-
fador's Inability*
to execute his
Office.

Information a-
gainft the Printer
of the above
Libel.

The Court of
King's Bench
grants Informa-
tions for Libels
at Difcretion.

Britain, with the Dukes of Praffin and Nevernois, de Sainte Foy and Regnier de Guerchy, Ambaffador Extraordinary," &c. &c. &c. tending to asperse, traduce, and defame the Honour, Reputation, Character, and Abilities of his Excellency Count *de Guerchy*, and to render him ridiculous and contemptible, and to arraign the Conduct and Behaviour of his faid Excellency Count *de Guerchy*, in his Character of Ambaffador of the *French King* to our King ; and to violate the Protection and Security which Ambaffadors and other public Minifters are intitled to, and enjoy in this Kingdom ; and to caufe it to be believed that his faid Excellency had, after his Arrival in this Kingdom, been guilty of unjuft, unwarrantable, and oppreffive Proceedings towards the faid Defendant, and his Relations and Friends ; and alfo to infynuate that his faid Excellency Count *de Guerchy* was not fit or qualified to fill or execute the Office and Functions of Ambaffador of the faid *French King* to our King. *Eafter Term 4 Geo. 3. 1764. K. B. MSS. The King v. Charles, Genevieve, Lewis, Auguftus, Andrew, Tymothy (a) D'Eon D'Beaumont.*

The like Information was filed the fame Term againft the Defendant, for being the (b) Printer of the above libellous Book ; to which the Defendant appeared, but there has been no farther Profecution had againft him. *The King v. Simon Vandenburg.*

Though every Species and Degree of Calumny and Detraction of this Kind is deemed odious in the Eye of the Law, and punifhable either by civil Action or criminal Profecution, in moft Cafes at the Election of the Party injured, yet the Court of *King's Bench*, whole Jurifdiction herein is founded upon the Necessity of preventing Quarrels and ill Blood, and which deals with this Offence as of dangerous Confequence to, and destructive of, the Peace of the Nation, always exercifes a difcretionary Power in granting an Information for an Offence of this Nature, and will, in many Cafes, leave the Party to his ordinary Remedy. 3 *Bac. Abr.* 492. as appears in the following Inftances.

(a) The Defendant pleaded Not guilty in *Trinity Term 4 Geo. 3. 1764.* and the Caufe was tried before L. C. J. *Mansfield*, by a fpecial Jury, at the Sittings in *Middlefex*, the fame Term, when the Defendant was convicted, but he has fince fecured himfelf, and therefore has not received the Judgment of the Court, and the Profecutor (the Count *de Guerchy*) is proceeding to outlaw him.

(b) No Information was ever filed againft Mr. *Dixwel* the Publisher. *Mirum !*

On a Motion for an Information for a Libel in advertising that one *Maddox*, an Apothecary, had personated Dr. *Crow*, a Physician, and wrote and took his Fee (which the Apothecary did not pretend to deny) the Chief Justice declared, that though Truth be no Justification for a Libel, as it is for defamatory Words, yet it will be sufficient Cause to prevent the Interposition of the Court in this extraordinary Manner, and induce them to leave it to the ordinary Course of Justice, before a Grand Jury. Whereupon the Rule for an Information was discharged; and *Lee C. J.* said, though the Accusation of his having counterfeited (*personated*) another, was certainly libellous, yet the Court refused an Information, because he appeared to be guilty of it. *Hilary Term 8 Geo. 1722. Stra. 498. Andr. 299. 3 Bac. Abr. 492. Barnard. K. B. 13. The King v. Bickerton.*

Where the Matter complained of happens to be true.

An Information for a Libel upon the Cornfactors at *Bear-key*, denied for the same Reason. *Michaelmas Term 9 Geo. 1723. K. B. Stra. 498. The King v. Bebarrel*

Motion for an Information against the Defendant, for publishing a very great Reflection upon the *African Company* in one of the News Papers, by charging them with having supported their Trade by Treachery and Fraud: But as this was only a Dispute, on a Matter of Trade; the Court thought it would be sufficient to apply to the Grand Jury. *Michaelmas Term 2 Geo. 2. 1729. K. B. 90. The King v. Roberts.*

Dispute on a Matter of Trade.

A Man advertised in a public News Paper, that his Wife had eloped from him, and cautioned all Persons from trusting her; and an Information for a Libel being moved for, it was denied, because it was the only Way the Husband could take to secure himself. The Application was against the Husband; and *Lee C. J.* said the Advertisement did not contain any Thing criminal in him. — Term 5 Geo. 2. 1732. *K. B. 3 Bac. Abr. 492. Andr. 229. The King v. Enes.*

Information refused for advertising a wife.

On Rule to shew Cause, why an Information should not go against the Defendant, for publishing a Libel upon one Mr. *Hayward*, a Wine-Merchant, in the Daily Advertiser; the Substance of the Advertisement was, "This is to give Notice, that Mr. *Hayward* sells Wine or Brandy by the Gallon, Quart, or Pint; and is to be met with at any Hour every Afternoon at one of the Taverns in *Smithfield*. N. B. Mr. *Hayward* sells an excellent Salve, made by a Relation of his in *Dublin*, to cure Women's Breasts with, which may be had at 12d. a Bottle." The De-

To say, that a Merchant sells Wine by Retail, no Reflection, or

to say, a Man hath an excellent Salve, can no ways traduce his Character.

N

fendant's

pendant's Counsel insisted that this was no Libel; but Mr. *Fazakerly* submitted it, that it was, by Reason that it tended to lessen a Man in his Trade, and make him ridiculous; however, the Court thought it would be going too far to grant an Information for such a Paper; it was enough to leave the Party to his ordinary Remedy; accordingly the Rule was discharged. *Lee C. J.* said, the Party was charged with a Matter which did not include any Guilt. *Michaelmas Term 6 Geo. 2. 1733. 2 Barnard. K. B. 183. Andr. 229. 2 Kel. 250. pl. 201. The King v. Jenner.*

Representation of an Injury, without Intention to asperse, tho' Fraud suggested, no Libel.

A writing was directed to General *Wills*, and the four principal Officers of the Guards, to be presented to his Majesty for Redress; the Paper contained the Defendant's Case, that he furnished the Guard at *White-ball* with Fire and Candle, for which, the Government owed him 350*l.* that he obtained a Warrant for his Money, and Captain *Carr* (the Prosecutor) told him, that if he would assign the Warrant, he would procure him the Money; the Warrant was assigned, and the Money paid to *Carr*, who refused paying it to the Defendant; and the Question was, if an Information should be granted: And the Court held it no Libel, but a Representation of an Injury, drawn up in a proper Way for Redress, without any Intention to asperse the Prosecutor; and though there be a Suggestion of a Fraud, yet that is no more than what is in every Bill in *Chancery*, which was never held libellous if relative to the subject Matter. *Hilary Term 8 Geo. 2. 1735. K. B. 3 Bac. Abr. 492. See Andr. 229. The King v. Bailey.*

Where the granting the Information would be a Discouragement to learned Inquiries.

An Information was refused, and the Party left to his ordinary Remedy against a Person for publishing in a News Paper, that *Ward's* Pill and Drop had done great Mischief in twelve different Cases, and that they were a Compound of Poison and Antimony, &c. — Term 8 Geo. 2. 1735. K. B. 3 Bac. Abr. 492. *The King v. Roberts.*

Advertisement, that Lady *Mordington* kept an Assembly in *Moor-fields*; no Reflection on the Wife of the Nobleman of that Name.

It was advertised in one of the Daily Papers, that Lady *Mordington* kept an Assembly in *Moor-fields*, and it being counter-advertised, by my Lord's Order, that the Person calling herself Lady *Mordington* was an Imposatrix, and that there was no such Person, except his Wife, who always lived with him; the Court refused to grant an Information; for though she be called an Imposatrix, yet that relates to her assuming the Title of Lady *Mordington*, and which she is alledged not to have any Right to; and therefore, in this Respect, may well be called an Imposatrix.

prosecutrix. *Easter Term 8 Geo. 2. 1735. K. B. 3 Bac. Abr. 492. The King v. Jenner.*

A Person in a private Letter to the Party expostulates with him about some Vices, of which he apprehends him guilty, and desires him to refrain from them; or if he sends such Letter to a Father, in relation to some Faults of his Children; these are said to be not at all libellous, being Acts of Friendship, not designed for Defamation, but Reformation. *2 Brownl. 151, 152.* But such Matters published in a News Paper, though the Pretence be Reformation, is, it seems, libellous, as was agreed *Trinity Term 9 G. 2. 1736. K. B. 3 Bac. Abr. 492. The King v. Knight.*

Where the Matter complained of was intended for Reformation, not Defamation; not libellous.

otherwise if published in a News Paper.

The Party, after two Terms, three Sessions, and one Assizes, applied, the Court refused to grant an Information; though it was agreed, had the Application been recent, an Information would have been granted. *Trinity Term 9 Geo. 2. 1736. K. B. 3 Bac. Abr. 492. The King v. Knight.*

Information refused, where Application made after great Length of Time.

The Prosecutrix, Miss *Mary Jerom*, was educated among the Quakers, at the Town of *Nottingham*; her Parents, who lived there, being of that Persuasion. There are several separate Congregations of Quakers in this Town; and once a Month a general Assembly is held of them all. At these monthly Meetings, they take into Consideration the Conduct of such of their Members, as have not acted conformably to their Rules; and proceed according to the Direction of our Saviour in the 18th Chapter of *St. Matthew*, v. 15, 16 and 17. which they call their Discipline. If gentle Admonitions in private have no Effect, Complaint is made to the monthly Meeting; from whence a Deputation is formally sent, to visit, and to endeavour to reclaim the Party offending. And if these Steps prove ineffectual, they proceed at last to a final Sentence of Expulsion; which is usually by some Instrument or Paper in Writing, drawn up for that Purpose, and openly read at one of the Meetings for publick Worship. The Person employed in this Service is called the Clerk of the Meeting; and the Writing, by which the Society exclude and disown as their Member the Delinquent, generally sets forth the Cause of their Proceedings, and the fruitless Care and Endeavours of the Society to reclaim. This has been their general Practice since the Toleration Act; and at *Nottingham*, as well as in many other Places, they continue on this Plan to this Time. The Prosecutrix having acted in Disobedience to their Rules, by frequenting Places

Where the Matter complained of is Admonition.

of public Diversions, going into Mourning for the Death of a Relation, and doing other Things which they esteem unlawful: The Method of Admonition, and Visitation by Deputies, was taken by the Society; and several Conferences were had; but they proving ineffectual, and she absenting herself from their Meetings, and declaring that she did not look upon herself as one of their Body, the Society at last (after several fruitless Attempts to reclaim her for a Year and an half) proceeded in their usual Way to the Sentence of Expulsion, in the following Words, which were reduced into Writing, approved of by the monthly Meeting, and afterwards read by the Defendant *Francis Hart*, as Clerk of the Meeting, at the Close of their Meeting for Worship, at *Nottingham*, on *Sunday September 6, 1761.*

Sentence of Expulsion.

“Whereas *Mary Jerom*, of this Town, was born of Parents professing the same religious Principles with us, and by them educated in our Society; but not duly regarding the Truth we profess, she imbibed erroneous Notions contrary to Scripture Doctrine, and in divers Parts of her Conduct acted very inconsistently with a Life of self-denial, and of late Years mostly neglecting Meeting for Divine Worship, and when visited by Friends appointed by our monthly Meeting in love to her Soul, and in order to reclaim her from Error and bring her to the Acknowledgement of Truth both in Judgment and Practice, but rejecting our Labour of Love she declared that she did not look upon herself as a Member of our Society. We therefore hereby declare her not in Unity with nor a Member of our Religious Society, until by unfeigned Repentance she duly acknowledge Scripture Doctrine, and behave agreeable to our holy Profession; which that she may we sincerely desire. Signed in and by Order of our monthly Meeting, held at *Nottingham*, the fifth of the eighth Month, 1761. By *Francis Hart*, Clerk.”

Prosecutrix moved *K. B.* for an Information for the above Sentence of Expulsion as for a Libel.

Court rejected Motion,

Bill of Indictment preferred,

which was found,

The Prosecutrix being acquainted with this Proceeding, sent her Maid Servant to the Defendant for a Copy of this Sentence, who accordingly transcribed it, and inclosed it in a Cover directed to Mrs. *Mary Jerom*; who being thus possessed of it, annexed it to an Affidavit, and applied to the Court of *King's Bench*, for an Information for a Libel. But the Court rejected the Motion, and refused to grant a Rule to shew Cause. She afterwards on the 12th of *March 1762.* preferred a Bill of Indictment against the Defendant for a Libel, before the Grand Jury at the Assizes held for the Town of *Nottingham*, which Bill being found by them,

them, was afterwards removed by *Certiorari* into the *King's Bench*, and the Defendant having pleaded Not guilty, it was tried before Mr. Justice *Clive*, at the Summer Affizes held for the Town of *Nottingham*, July 30, 1762. The Evidence on the Part of the Prosecution was, the Prosecutrix and her Maid Servant who went for the Paper; and the Evidence of the Publication of it as a Libel was, the Direction of it to the Prosecutrix, and the Defendant's Acknowledgement to the Maid that he read it at the Meeting. The Defendant's Counsel called no Witnesses, being of Opinion, that the Quakers, who were the only Persons that could give an Account of their Method of proceeding, were disabled by the Statute of 7 & 8 *W. c.* 34. from being Witnesses on a criminal Prosecution, and being restrained from arguing that the Paper in Question was no Libel, by the Judge, who said that such a Question was more proper to be determined by the Court above, could only insist, that the Evidence on the Part of the Prosecution was not sufficient to maintain the Indictment. The Judge left the Case, with its Circumstances to the Jury; but rather recommended it to them to acquit the Defendant. The Jury, after withdrawing about three Hours, found the Defendant guilty. In the *Michaelmas* Term following, Mr. *Cust* moved the Court of *King's Bench* for a new Trial, and after stating the above mentioned Facts, and observing upon the Circumstances of Hardship which would attend the Case on a Motion in Arrest of Judgment, where no Facts could be relied on but what appeared in the Record, and after a Verdict it might be presumed that a malicious Intention to defame the Prosecutrix (which was charged in the Indictment) was proved, insisting that the leaving such a Case as this to a Jury, would be enabling a Jury to set up a Judgment in Opposition to the Legislature, and overturn the Toleration Act, and that therefore the Verdict ought to be set aside as a Verdict against Law. The Court was clearly of Opinion, that the Jury should have been directed to acquit the Defendant; and, as Notice of the Motion was given, and Counsel appeared for the Prosecution, who did not contradict the above mentioned Facts, the Court said they would not do so much Credit to such a Prosecution as to grant a Rule to shew Cause; and they ordered the Verdict to be set aside, and a new Trial to be had, on the first Motion. *Michaelmas* Term 3 *Geo.* 3. 1763. *K. B.* 2 *Burn's Eccles. Law* 779. *The King v. Hart.*

removed into
K. B.

Evidence,

Quakers no legal
Witnesses on
criminal Prosec-
utions,

Argument that
Paper was no
Libel not al-
lowed,

Evidence not
sufficient.

Judge recom-
mended to acquit.
Jury find Defen-
dant guilty.

Motion in *K. B.*
for a new Trial,

Verdict set aside,
and new Trial
granted without
Rule to shew
Cause,

C H A P. XX.

A M E N D M E N T.

Ven. Fac. return-
able 23rd Oct.
Distingas testē
24th Oct. not
amendable.

Trial without
Authority.
Mistake in Skill.

Gould J.

Powis J.

Holt Ch. J.

Powell J.

THE Defendant was found guilty upon an Information, for a (a) Libel, and it was moved in Arrest of Judgment, that the *Venire Facias* was returnable 23^d of October, but the *Distingas* was Testē 24th of October, whereas the *Venire* was returned the 23^d. The Court held this not amendable by any Statute of Amendment, nor at Common Law, because it would be to warrant a Trial that was tried without any Authority, and to make it contrary to the Truth of the Fact, and it is a Mistake of the Clerk in Skill. *Gould* Justice held, that it was amendable at Common Law. *Powis* Justice thought it rather amendable than not. *Holt* Chief Justice, and *Powell* Justice, held it not amendable; and thereupon (as the Lord Chief Justice *Raymond* says) *Powis*, who had delivered his Opinion with great Dubiousness, and concluded it as mentioned above, came over to *Holt* and *Powell*, and held it not amendable; because, as he said, it should not go upon a Court divided. And see there the (b) Arguments of the Judges much at large. S. C. cited *Gilb. Hist. C. P.* 117. and *Bac. Abr.* in the same Words. Michaelmas Term 3 An. 1702. 2. B. *Salk.* 51. pl. 14. 2 *Ld. Raym.* 1061. 2 *Vin. Abr.* 395. pl. 20. *The Queen v. Tutchin.*

(a) This being a Cause of great Expectation, for it was a Prosecution directed by the Queen at the Instance of the *House of Commons*, it was very elaborately argued on Behalf of the Crown; and after very solemn and long Arguments on both Sides, and also *seriatim* by the Court, the Judgment was arrested. 2 *Lord Raym.* 1061.

(b) The Lord Chief Justice *Raymond* says, that he was not present at the Arguments, expecting they would have been printed, all the Proceedings having been taken for that Purpose in Short-Hand; and was not for the same Reason so exact in taking the Arguments of the Judges, which therefore may not improbably have been mistaken. 2 *Lord Raym.* 1069.

C H A P. XXI.

N O T I C E o f T R I A L.

ON an Information for a Libel, there must be 14 Days Notice of Trial, and his Notice of Trial is sufficient for him to appear, and if he do not, the Recognizance must be estreated, though on such Recognizance to appear *de Die in Diem*, the Party must have Notice to appear (unless in the said Case) except the first and last Day of Term, when they must always appear, or the Recognizance is forfeited. *Easter Term 6 Geo. 1720. K. B. Fortesc. Rep. 357. The King v. Pain.*

14 Days Notice of Trial are necessary on an Information for a Libel.

Party upon Recognizance must always appear first and last Day of Term, or the Recognizance forfeited.

C H A P. XXII.

E V I D E N C E.

IN an Information for publishing a Libel, the Defendant's own Confession was given in Evidence against him; but by *Holt* Chief Justice, If there was no other Evidence against him but his own Confession, the whole must be taken, and not so much of it as would serve to convict him. *Hilary Term 7 Wil. 3. 1701. K. B. 5 Mod. 165. The King v. Pain.*

Defendant's own Confession.

On a Trial on an Information for a Libel, Depositions taken before a Justice of Peace relating to the Fact, the Deponent being since dead, were not allowed in Evidence, by *K. B.* upon Advice with the Judges of *C. P.* In Cases of Felony such Depositions before a Justice, if the Deponent die, may be used in Evidence by *1 & 2 Ph. & Mar. chap. 13.* But this cannot be extended farther than the particular Case of Felony. *Salk. 281. pl. 8. Comb. 358, 359. 5 Mod. 165. 12 Vin. Abr. 228. pl. 2. S. C.*

Depositions taken before a Justice of Peace not allowed in Evidence.

And after long Debate and Conference with the Justices of *C. P.* by Justice *Eyre*, the Court would not allow it to be given in Evidence, and the Information was refused to be accepted; and the Ch. J. declared, that it was the Opinion of both Courts, that

Reason why they should not be given in Evidence.

that these Depositions should not be given in Evidence, the Defendant not being present when they were taken before the Mayor, and had lost the Benefit of a Cross-Examination. *Ld. Raym.* 729, 730. *5 Mod.* 163. *S. G.*

Variance between Libel recited and that given in Evidence, fatal.

Where Substance only set forth in Latin sufficient, if Libel be proved to have same Sense.

Difference between Words spoken, and Words written.

What Confession of being Author of a Libel is sufficient to read it.

Information for a Libel of which the Defendant was only concerned in Part.

Where one is indicted for writing a Libel *secundum Tenorem sequentem*, any the least (a) Variance between the Libel recited and that given in Evidence, is fatal; but where the Substance only of a Libel is set forth in *Latin*, it is sufficient, if the Libel be proved to have the same Sense as set forth. *2 Hawk. Pl. Cr.* 436. *pl.* 36. See *12 Mod.* 218, 219. *11 Mod.* 97.

There is a Difference between Words spoken, and Words written; of the former there can be no Tenor, [*viz.* a Transcript] for there is no Original to compare them with, as there is of Words written, and though there have been Attempts to plead a Tenor of Words spoken, it has never been allowed; and therefore, if one declares for Words spoken, a Variance in the Omission, or Addition of a Word is not material, and it is sufficient, if so many of the Words be proved, and found, as are in themselves actionable. *12 Vin. Abr.* 68. *pl.* 46.

In an Information for a Libel against the Doctrine of the *Trinity*, the Witness for the Crown, who produced the Libel, swore that it was shewn to the Defendant, who owned himself the Author of that Book, Errors of the Press and some small Variations excepted. The Counsel for the Defendant objected, that this Evidence would not intitle Mr. Attorney to read the Book, because the Confession was not absolute, and therefore amounted to a Denial that he was the Author of that identical Book. *But Chief Justice *Pratt* allowed it to be read, saying he would put it upon the Defendant to shew that there were material Variances. *Hilary Term 7 Geo. 1721. K. B. Stra.* 416. *The King v. Hall.*

An Information for a Libel, setting forth, that the Defendant caused to be printed and published a scandalous Libel, called "*The Post-Boy of — to —*," in which was contained the following scandalous Passage, and so set forth the Paragraph. Upon the Trial it appeared, that the Defendant brought the Paragraph to the Printer, and desired him to publish it in the *Post-Boy*.

(a) In an Information for a Libel, the Variance of the Word (*nor*) for (*not*) was held fatal upon Evidence. *12 Vin. Abr.* 68. *pl.* 45.

And

And the Chief Justice *Raymond* was of Opinion, that this Evidence did not support the Information, which charges him as Publisher of the whole Paper, whereas it now appears he was only concerned in Part of it; so the Defendant was acquitted. *Trinity Term 12 Geo. 1726. 2 Sess. Cas. 32. pl. 36. The King v. Newport.* Evidence did not support Information. Defendant acquitted.

A Libel must be proved to be written in the County laid in the Indictment, to convict the Defendant of making the Libel, all Matters of Crime being local. *4 Read. Stat. Law. 155. 8 Mod. 328. S. P.* Libel must be proved to be wrote in County laid in Indictment.

CHAP. XXIII.

Province of Court and Jury.

IN an Information for a Libel, it was urged, that the only Thing to be examined by the Court is, whether the Paper published contain any libellous Matter; for then the Application must be left to the Jury. But *per Cur.* This Rule is not to be taken so extensively; for where the Application is merely indifferent, we will not grant an Information, but there must be a seeming and apparent Application to be made. *Easter Term 2 Geo. 2. 1729. K. B. Fitzgib. 57. pl. 7. The King v. Butcheler.* The Court must see that the libellous Matter is applicable to the Party complaining.

CHAP. XXIV.

COSTS.

THE Court made a general Rule, viz. that where any Person moves for an Information, and has a Rule nisi, if, upon shewing Cause, that Rule is discharged, the Party who made the Motion shall pay Costs. Note; This Rule was never strictly followed, but always held discretionary. *Easter Term 5 Geo. 2. 1732. K. B. 2 Kel. 61. pl. 8. Anon.* General Rule of Court as to Costs.

O

Upon

If the Defendant is acquitted against Evidence, yet if there is no Certificate, he shall have Costs.

Upon Trial of an Information for a Libel, the Jury acquitted the Defendant contrary to the Direction of the Court. Upon which the Defendant moved above for Costs on 4 & 5 *Wil. & Mar. c. 18.* which provides, that in Cases where the Defendant is acquitted, the Court is authorized to award Costs to the Defendant; unless the Judge shall at the Trial certify there was a reasonable Cause. In this Case no such Certificate was asked; but it was insisted on for the Prosecutor, that it was discretionary in the Court. The Chief Justice certified *Ore tenus*, that it was a Verdict against Evidence; but then he and all the others held, that it was now too late to inquire into the probable Cause; and that it was not discretionary, but compulsory upon them, where there was no Certificate: So the Defendant had his Costs. *Easter Term 13 Geo. 2. 1740. K. B. 2 Stra. 1131. The King v. Woodfall.*

CHAP. XXV.

OUTLAWRY and ERROR.

A Writ of Error in all Cases except Treason and Felony, is granted *ex Debito Justitiæ*.
“*The History of the Clemency of our English Monarchs.*”

THE Defendant *Matthias Earbery* was a worthy honest Clergyman and a good Divine, but was drawn in by some of his Party to write a Pamphlet, called “*The History of the Clemency of our English Monarchs*”; in which the Ministry thought there were some scandalous Reflections upon the Government, he was therefore indicted for a scandalous Libel against the Government; and thereupon, for want of Appearance, he was outlawed: Whereupon the Defendant, giving Notice to the Attorney (a) General, moved for a Writ of Error, which the Attorney General opposed, as not being allowed in the Case of the Crown, without the King’s Leave.

History of Outlawry.

Anciently no Man could be outlawed but for Felony or Treason, and the Punishment was Death; he had, as the Law calls it, *Caput Lupinum*, his Life being exposed to every one he met. See 3 *Bac. Abr.* 746. But some Time after, Process of Outlawry was ordered to lie in all Actions that were *Quare Vi &*

(a) Sir *Philip Yorke*; afterwards Lord Chief Justice of the *King’s Bench*; Lord Chancellor; and Earl of *Hardwicke*. See *Chap. 11.* in Notes.

Arms, which were called *Delicta*; for the King had a Fine: And since that, by divers Acts of Parliament, Outlawries lie in Debt, Account, Case, and several other Cases. By all these Outlawries he is *extra Legem positus*, forfeits the Profits of his Land, and all his Goods, and is disabled to sue; but this is only Process to bring him in to Answer the King's Suit; and so it is of Excommunication. Plea of Outlawry does not abate the Writ, it is only in Disability of the Person till he sues out a Charter of Pardon. *Co. Lit.* 128. b.

If one who is in Prison shall be outlawed in Debt, Trespass, or in appeal of Robbery, he shall reverse this Outlawry by Writ of Error; but when the Defendant comes in on the *Capias utlagatum*, then it is by Plea for Matters apparent in the Record; but for Matters of Fact, as Imprisonment, Death, &c. it is by Writ of Error, unless it be in Felony, and there he may plead, *in Favorem Vitæ*. *Co. Lit.* 259. b.

Outlawries by what Means reversible.

To refuse the Defendant a Writ of Error in this Case, is a worse Punishment than the Court would or could inflict for the Crime itself, because of the Forfeitures of his Goods and Disability of the Person, and must end in Imprisonment for Life; and if for a single Trespass, is a sore Imprisonment. On *Scire facias* to repeal a Patent, whether the Party could bring a Writ of Error without Petition to the Crown, was a Question. But it seems to be agreed, that an Outlawry may be reversed in some Cases, without suing by Petition to the Crown. 3 *Leon.* 160. pl. 208. 2 *Leon.* 194. pl. 244. Many Outlawries have been reversed by Writ of Error, and yet in such Cases the King has an immediate Interest.

Severe Consequences of refusing a Writ of Error in this Case.

4 & 5 *William and Mary*, c. 18. recites Outlawries in the *King's Bench* for Debt, Trespass and other Misdemeanors; and that such cannot be reversed but by the personal Appearance of the Party; whereby, if it be a poor Man, and he dies in Prison, he is very unfortunate; and if able and living, it is very chargeable to reverse such Outlawry. This Act says, *for the more easy reversing Outlawries*; and provides, that no Person outlawed in the said Court of *King's Bench*, for any Cause (except Treason or Felony) shall be compelled to appear in Person to reverse, but may do it by Attorney, and reverse the Outlawry in all Cases without Bail (except where Special Bail is ordered by the Court). *The King v. Macartney*, *Trin.* 2 *Geo.* 1716. The Defendant was outlawed for the Murder of Duke *Hamilton*; and it

Stat. 4 & 5 W. & M. c. 18.

The King v. Macartney.

The Writ allowed on Outlawry for Murder, the Witnesses being living.

Effect of Outlawry for a Misdemeanor.

It is not a Conviction.

Different Course in K. B. and C. P.

In personal Actions.

was referred to the Attorney General, who made his Report, that a Writ of Error was never denied if the Witnesses were living.

One outlawed for a Misdemeanor, and fined 5000*l.* and the Court held the Fine was nought; because in a Misdemeanor, the Outlawry does not work as a Conviction for the Offence, as it does in Treason and Felony, but as a Conviction of the Contempt for not answering, which Contempt is punished by the Forfeiture of his Goods and Chattels; and if he be fined now, he must be fined again on the principal Judgment.

That an Outlawry is no Conviction in Misdemeanors, see *Fleta* 42. *Quamvis quis pro Contumacia & Fuga utlagetur, non propter hoc convictus est de Facto principali.* *Salk.* 494. *pl.* 1.

'Tis a great Charge to reverse an Outlawry in the *King's Bench*, because the Defendant must appear in Person, but he need not in the *Common Pleas*, but may appear by Attorney. If the Attorney General confess the Error, Defendant shall plead presently, and be tried on the Indictment.

In personal Actions, though for 10,000*l.* if a Person be outlawed for the same, and if the Defendant appears at the Return of the Exigent, he may reverse the Outlawry without putting in Bail; and though Defendant be at Liberty and bailed, yet still it is a Punishment, *i. e.* Forfeiture of Lands and Goods. *Salk.* 106. *pl.* 11. 353. *pl.* 15. 2 *Salk.* 450. *pl.* 2. *Fortesc. Rep.* 173. was on a Conviction of forcible Detainer, and the Defendant was fined 100*l.* a Writ of Error was brought, but the Court would not bail the Defendant, but agreed *per Cur'*; that on a Writ of Error to reverse an Outlawry the Court will take Bail, but not to reverse a Judgment. 2 *Stra.* 1178. In an Indictment, the Court refused to bail the Defendant being in Execution. *Salk.* 106. *pl.* 11. Suppose this were the common Case of an Indictment for a Battery, and the Defendant outlawed for the same, would not that be just the same Case as an Outlawry in a civil Action? You cannot fine him or punish him for Contempt; for on the Outlawry he is disabled and forfeits; and if a Writ of Error be refused, he must be kept in Prison all his Life long, for a Contempt only for not appearing. And indeed this is in the Nature of a civil Action, being only for a Misdemeanor. If a Man be outlawed in Battery, is he to remain in Gaol for ever at

at the King's Will and Pleasure? To have a Writ of Error in Felony or Treason is inconvenient and unjust, because of the great Forfeitures to the several Lords, and to the Crown; but in Misdemeanors no Inconvenience, an Action will lie for a Libel, and so will an Indictment.

The Attorney General at another Day, moved this Matter again; and Chief Justice *Pratt* and *Powis* seemed to think, that the Defendant in Discretion ought not be bailed; but Justice *Eyre* and *Fortescue A.* were clear of Opinion, this was a Case within the Act of Parliament for reversal of Outlawries, and therefore he ought to be bailed. For although in the Preamble it is said where the Proceedings to the Outlawry are in the *King's Bench*, yet in the Purview and in two or three Clauses it is said only, Outlawries in the *King's Bench*, and this is now an Outlawry in the *King's Bench*, being removed hither by *Certiorari*; for now it is a Record; and till it appears on Record, Lord *Coke* says expressly, it has no Effect as to Forfeiture, and here it first appears on Record, and no were else; so they thought it was within the express Meaning and Intention of the Act to bail him. And *Eyre* and *Fortescue A.* quoted 2 *Salk.* 504. that it was the Resolution of all the Judges of *England*, except Judge *Price* and Judge *Smith*, that the Queen could not deny a Writ of Error, but that it was grantable *ex Debito Justitiæ* (except in Treason and Felony); and the true Reason why one outlawed for Treason or Felony, cannot have a Writ of Error, without the King's Leave, is because it is a Conviction; and then he has forfeited all he has to the Crown. Upon this the whole Court thought it reasonable and just that he should have a Writ of Error; and thereupon the Attorney General did immediately sign a Warrant for a Writ of Error, and did consent to his being bailed to appear accordingly. This was moved three or four Times. *Trinity Term 9 Geo. 1724. K. B. Fortesc. Rep. 37. 8 Mod. 177. The King v. Earbery.*

Reasons against
Error in Treason
and Felony.

Outlawry is a
Conviction in
Treason and Felony.

The Writ granted in this Case.

CHAP. XXVI.

PUNISHMENTS.

If Laws were bare Prohibitions to Vice they would have but little Effect.

Good Laws armed with Pains, &c. to suppress Vice, and point out Honours, &c. for Virtue.

Laws of different Countries provide different Punishments for Libellers.

Punishment of Slander by the Laws of the *Lydians*.

Punishable with Death by the *Roman Law*. Uncapable of being a Witness, to make a Will, to be Executor or Legatee by the *Civil Law*. Punishment in *Europe* at present arbitrary.

Slanderers severely punished long before the Conquest.

IF Laws consisted only of bare Prohibitions to Vice, they would have but little Effect upon the irregular Passions of Mankind; it is necessary therefore to deter Men from the Commission of Enormities, by Punishments well regulated and duly administered; and all good Laws are armed with Pains, Death and Infamy, for the Suppression of Vice; as they point out Honours, public Employments and Fame, as Excitements to Virtue.

As for the particular Punishment of Libellers, the Laws of different Countries and Ages have varied in it greatly, according to the different Notions they had of Fame and Obloquy, or in Proportion to the Increase or Danger of the Crime in each Nation.

My Lord *Coke*, I cannot tell upon what Authority, mentions a Law of the *Lydians*, by which the Publishers and Dispersers of Slander were to be let Blood in the Tongue, and the Listners to or Fautors of it, in the Ear. 12 *Rep.* 35.

By the *Roman Law*, the Punishment of the Author or Publisher of an infamous Libel was (a) Death: By the Civil Law the Offender was made incapable to be a Witness, or to make his (b) Testament. *Wood's Civ. Law* 263. c. 7. The Punishment over most Parts of *Europe* at present is arbitrary, but not capital. *Ibid.*

Our Laws took very early Notice of this Crime: Long before the Conquest, Defamers and Slanderers were severely punished;

(a) The Law of the twelve Tables made it Death to hurt the Reputation of another. The Words of the Law run thus, *Si quis accensasset malum Carmen, five condidisset, quod Infamiam faxit, Flagitiumque alteri, Capital esset*. "Whoever writes Verses hurtful to the Honour and Reputation of another, let him be punished with Death."

(b) By the Civil Law any Person who was convicted of publishing a Libel was esteemed infamous, so that he could not make a Will, or be an Executor or Legatee. *Fortesc. Rep.* 100. *Swinb.* 106. Part 2. Sect. 19. *Idem* 375. Part 5. Sect. 10.

King

King *Alfred*, the first *Saxon* Monarch that made the Establishment of good Laws, his Care, ordained, that the Forger of Slander should have his Tongue cut out, except he redeemed it with the Price of his Head. "*Si quis publicum Mendacium confingat, & ille in eo firmetur, nullâ levi Re hoc emendet, sed Lingua ei excidatur, nec minori Precio redimi liceat, quam juxta Capitis Æstimationem censebatur.*" *Wilk. Leg. Angl. Sax.* 41. pl. 28. *Lamb. Sax. Laws.* 29. pl. 28.

Forger of Slander to lose his Tongue by the *Saxon* Law, unless he redeemed it.

King *Edgar*'s is as strict to the same Purpose. "*Si quis alium injuste diffamare velit, ut sive Vitâ sive Fortunis pejor sit; si alter refellere possit quod de eo quis affirmare velit, Linguae suæ reus sit, nisi eam Æstimatione Capitis compensare voluerit.*" *Wilk. Leg. Angl. Sax.* 78. pl. 4. *Lamb. Sax. Laws.* 64. pl. 4.

By King *Edgar*'s Law.

Canutus the *Dane*, established this Law of his Predecessors in almost the same Words. "*Et si quis alterum Injuriam diffamare velit, ut alterutrum vel Pecunia vel Vita ei diminuatur, si tunc alter eam refellere possit, ut quis ei testificari velit, perdat Linguam suam, nisi illam Capitis Æstimatione compensare velit.*" *Wilk. Leg. Angl. Sax.* 136. pl. 15. *Lamb. Sax. Laws.* 110. pl. 15.

By the Law of the *Danes*.

'Tis observable, that where the Punishment was so severe, the Slander ought to be false, to incur it.

When Punishment severe, Slander must be false.

My Lord *Coke*, in his Chapter of the *Star-Chamber*, 4 *Inst.* 63. chap. 5. says, That Dispersers of false and dangerous Rumours and News, and scandalous Libelling, are among the Crimes which, for their Heinousness, that Court took Cognizance of; and he says, that Court punished heinous Crimes, by Imprisonment, Pillory, Papers, Whipping, Loss of Ears, Tacking of Ears, Stigmata in the Face, &c. and in the 3 *Inst.* 220. he gives an Account of several Offenders for the like Crimes, sentenced by the Common Law Courts to Fine and Imprisonment, &c. 4 *Inst.* 66. Chap. 5.

Star-Chamber took Cognizance of scandalous Libelling.

Punishment in *Star-Chamber*.

The Court of *Star-Chamber* has been held in great Contempt, because it was abolished by Act of Parliament 16 *Car. c.* 10. on Account of some insufferable Abuses that had crept into it, all the Cases that had been adjudged there, on Informations for Libels, were consequently of no Authority; whereas the Judgment given there, in Matters properly cognizable before them, which Libelling especially was, are allowed to be good Law at this Day, and are constantly quoted, as such, in the Court of *King's Bench*. Indeed it is said, that the Reason of disallowing the *Star-Chamber* Court, was because their Authority was before, and now is in, *K. B.* and

Star-Chamber held in Contempt, and why.

Judgment of that Court good Law at this Day.

Authority of *Star-Chamber* in the *King's Bench*.

Why *Star-Chamber* was taken away.

K. B. and consequently that Court unnecessary. *Comb.* 36. So the Lord Chief Justice *Holt* declared that *K. B.* possess all the lawful Power of the *Star-Chamber*. *Comb.* 142. 10 *Mod.* 187. And that the Court of *Star-Chamber* was taken away, because the Crimes were punishable in *K. B.* 5 *Mod.* 464; which is likewise intimated by the Statute itself. Now, tho' I am as well satisfied perhaps, with the taking away of the Court of *Star-Chamber*, considering the Occasion that had been given, as any Body can possibly be, and should equally rejoice, I hope, at the redressing any other public Grievance; yet I cannot condemn by the Lump, and argue, that because that Court did something amiss, therefore it did nothing right. At this Rate, every Court that had or has a Being, may be in Danger of the same Epithets.

Lord Ch. Just. *Coke's* honourable Mention of the *Star-Chamber*.

Who Judges of it.

How they determined.

Lord Chancellor of Ireland's Account of this Court.

For which Reason I presume it will not be altogether impertinent to produce the Sentiments of that Oracle of the Law, the above-mentioned Sir *Edward Coke*, concerning the Court of *Star-Chamber*. "It is (says he) the most honourable Court, our Parliament excepted, that is in the Christian World, both in Respect of the Judges, and of their honourable Proceedings according to their just Jurisdiction, and the ancient and just Orders of the Court. For the Judges of the same are, the *Grandees* of the Realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the King's Council, the Lord Privy Seal, all the Lords Spiritual and Temporal, and others of the King's most honourable Privy Council, and the principal Judges of the Realm, and such other Lords of Parliament as the King shall name. And they judge upon Confession, or Deposition of Witnesses. And the Court cannot sit for hearing of Causes under the Number of eight at the least; and it is truly said, the Court of *Star-Chamber*, if we regard Antiquity, is most ancient; if Dignity, most honourable. This Court, the right Institution and ancient Orders thereof being observed, doth keep all *England* in Quiet. 4 *Inst.* 65. Chap. 5. Conformable hereto, a late learned (a) Writer, who was advanced to the highest Post in the Law in a neighbouring Kingdom to that of our Mother Country, and wherein he died, has a Passage, which gives us a truer Account of the Court itself, and the Abolishment of it, than what is to be learnt elsewhere, and therefore I will insert it here. "The Court of

(a) *Richard West*, Lord Chancellor of Ireland, from June 1st 1725. 11 *Geo.* to 21 Dec. 1727. 12 *Geo.* *Har. Hist.* lr. 116. chap. 15.

Star-Chamber (a) whilst kept within due Bounds, was certainly of the greatest Use to preserve the Peace and Security of the Kingdom; and perhaps was the only Court which by its ordinary and proper Jurisdiction, could effectually prevent and punish Riots, Perjuries, and other Misdemeanors of the highest Nature. But being made use of by the Court to support Proclamations and Orders of State, and to vindicate illegal Commissions and Monopolies, that Extension of their Power became a Grievance insupportable, and the Nation was never easy till that Court was entirely suppressed by Act of Parliament." The *House of Commons* were so eager in their Zeal to destroy what they called a *Court of Inquisition*, that tho' the Bill was of so great Consequence, yet they sent it up to the Lords, with only once reading it, and without its being ever committed, which was a Thing, perhaps, never before heard of in Parliament. *Clar. Hist. Rebel.* 223.

The Bill for abolishing the Court of *Star-Chamber*, was sent up to the Lords with only once reading, and without it's being ever committed.

Whatever might be the Practice in earlier Times, there can be no Doubt but a Person who writes or publishes a Libel, is subject to the Action of the Party injured, in which Damages shall be recovered, and that being convicted on an Indictment or Information of such Misdemeanor, shall pay such Fine, and suffer such bodily Pain and Infamy, as to the Judges, in their Discretion, shall seem proper and according to the Quality and Circumstances of the Offender, and the Heinousness of the Crime. *3 Bac. Abr.* 498. *Hawk. Pl. Cr.* 196. *B. 1. Chap.* 73. *Sec.* 16.

Writer or Publisher of Libel, subject to an Action, Fine and corporal Punishment.

John de Northampton, an Attorney of the *King's Bench*, wrote a Letter to *Robert de Ferrars*, one of the King's Council, importing, "That neither Sir *William Scot* Chief Justice, nor his Fellows the King's Justices, nor their Clerks, any great Thing would do by Commandment of our Sovereign Lord the King, nor of *Queen Philip* in that Place, more than any other of the Realm;" which said *John* being called, confessed the said Letter by him to be written with his own proper Hand. The Judgment of the Court was, "And because the aforesaid *John* hath confessed the aforesaid Letter to have been by him written to *Robert de Ferrars*, one of the King's Privy Council, which Letter is not true: By Colour whereof the Lord the King may be offended with the Court and his Justices on that Account, which would tend to the Disgrace of the Justices and the Court; therefore the same *John* is committed to the Marshal, and afterwards

Attorney of K.B. to find Sureties for his good Behaviour for writing a libellous Letter concerning Ch. Just. Scot.

(a) *Disc. Treas. & Attaind.* 94.

found six Securities for his good Behaviour." *Michaelmas Term 18 Edw. 3. 1344. K. B. 3 Inst. 174. The King v. Northampton.*

Imprisonment,
Pillory, Security
for good Beha-
viour.

Hugh Baker, for a Libel against certain of the Inhabitants of *Chertsey*, was punished by Imprisonment, Pillory, and Security for his good Behaviour. *Michaelmas Term 4 Eliz. 1562. K. B. 3 Inst. 220. The Queen v. Baker.*

First Instance of
Pillory for a
Libel.

This seems, if not the first, to be one of the earliest Instances of an Offender being set in the Pillory for a Libel, when the Prosecution against him was by Way of Indictment in the *King's Bench*. I think my Lord *Coke* considers it in this Light, by his particular Manner of mentioning it at the End of a Catalogue of the Names of sundry who received remarkable Punishments in this Court; but for this Crime, none of them appear to have suffered more than Fine or Imprisonment, except this *Baker*. 'Tis true, the *Star-Chamber* did very early inflict severe and infamous Punishments for enormous Degrees of this Offence; but it seems that, in the Beginning, no Sort of corporal Punishment, except Imprisonment, was applied for bare Libelling, at Common Law.

Star-Chamber
inflicted severe
Punishment.

Fine for writing
against Religion.

One *Atwood* being convicted of writing against Religion, was fined 100 Marks. *Easter Term 5 Jac. 1607. K. B. Cro. Jac. 421. pl. 1. The King v. Atwood.*

One *Wrennum*,
for traducing
Lord Chancellor
Bacon in a Peti-
tion to the King,
was sentenced to
perpetual Impris-
onment, to ride
with his Face
towards the
Horse's Tail, to
acknowledge his
Offence in all the
Courts, to be pil-
loried, and to
lose both his
Ears.

The Attorney (a) General exhibited an Information in the *Star-Chamber*, against one *Wrennum*, *Ore tenus*, because he had diverse Times petitioned to the King against Sir *Francis Bacon* Lord Chancellor, pretending that the said Lord *Bacon* had done great Injustice to him, in granting an Injunction, and awarding Possession of Land against him, for which he had two Decrees in the Time of the former Chancellor: And also he made a Book of all the Proceedings in the said Cause between him and one *Fisher*, and dedicated and delivered it to the King, in which he notoriously traduced and scandalized the said Chancellor, saying, that for this unjust Decree, he, his Wife and Children were murdered, and by the worst Kind of Death, by Starving: And that now he having done unjustly, he must maintain it by speaking Untruths, and that he must use his Authority, Wit, Art, and Eloquence, for the better Maintenance thereof, with other such like scandalous Words: And because the Court conceived that the said *Wrennum* had wronged the said Lord Chancellor, in the said Suggestion, they all agreed to sentence him, That he should be

(a) Sir Henry Yelverton, see fol. 56 in Notes.

perpetually

perpetually imprisoned, and pay a Fine of 1000*l.* and that he should ride upon an Horse with his Face to the Tail, from the *Fleet* to *Westminster*, with his Fault written upon his Head, and that he should acknowledge his Offence in all the Courts at *Westminster*, and that he should stand there a reasonable Time upon the Pillory, and that one of his Ears should be cut off, and from thence should be carried to Prison again, and in the like Manner should go to *Cheapside*, and should have his other Ear cut off, &c. *Easter Term 16 Jac. 1618. St. Ch. Popb. 135. Wrennum's Case.*

From the Speeches made by Sir *Edward Coke*, and the rest of the Lords of the *Star-Chamber*, at the Censure of *Wrennum*, it appears that he was not only a Man of Quality and Figure in the World, but a Gentleman of excellent Parts: However, he was ruined, it seems by a tedious and expensive Suit in *Chancery*, and the Injustice and Oppression of his Judges: And with his Fortune this unhappy Gentleman appears to have lost his Friends. The whole Court seems to have been in Confederacy to complete his Destruction: Such was the Character of the celebrated Lord *Bacon*, that no Suggestions could be heard against him, how reasonable soever. It could not enter into the Heart of Man that a Nobleman of his fine Sense, and philosophical Turn of Mind, who perfectly understood the Rules of Morality, and appeared generous and benevolent, even to Profusion, could be touched with the sordid Vices of Avarice, Extortion and Oppression. And though Bribery and Corruption appear to have been at the greatest Height in the Court of *Chancery*, at this Time, and practised so openly, that when a Suitor came to see his Counsel, the first Question asked him was, *what Friends he had at York House*, (the Lord Chancellor's)? And his Servants were known to take one Side or other, in almost every Cause: Yet did the mighty Lord *Bacon's* Reputation blind the Eyes of all Mankind, and render the most palpable Corruptions doubtful.

The unfortunate *Wrennum* knew he had great Injustice done him, and violently suspected Bribery in the Case; but durst not charge the Chancellor with it, for fear of an Action of *Scandalum Magnatum*. On the other Hand he found his Estate was gone, his Family undone, and he had nothing to expect but a Gaol, as he informs us in his Case, unless he could find some Redress. In this Distress he applied himself to His Majesty, petitioning to be heard before the King and Council: But was told the Coun-

Wrennum a Man
of Quality and
of Parts,

ruined by a *Chancery* Suit,

and by his Judges.

Lord Chancellor
Bacon guilty of
Avarice, Extor-
tion and Op-
pression.

Bribery and Cor-
ruption practised
in the Court of
Chancery.

Wrennum was in-
jured.

cil could not trouble themselves with every Cause, where the Parties were dissatisfied with the Chancellor's Decrees; they must attend no other Business if they did: But, if the Petitioner could charge the Lord Chancellor with *Injustice* or with *Bribery*, or *Corruption*, the King would hear him: Whereupon *Wrennum* wrote the Book above mentioned, and dedicated it to His Majesty, wherein he charged the Chancellor with *Injustice* and *Oppression*, believing, if His Majesty would hear his Cause he should be able to demonstrate, there had been foul Play. For, says he, in his Defence, if I can shew my Cause was just, and the Lord Chancellor has decreed it against me, by Consequence I shall prove his Injustice: But neither the King, nor the Court of *Star-Chamber*, would enter into the Merits of the Cause; declaring his Book was a Libel, because he had charged the Chancellor with Injustice and Oppression, which he could not prove: Whereupon *Wrennum* despaired of Success, and submitted himself to the Mercy of his Judges, who, not considering he had already lost all he had, in pursuing this unlucky Cause, thought fit to finish his Ruin, by fining and imprisoning him; though it appeared within the Space of two Years, that his Adversary Sir *Edward Fisher*, carried his Cause by dint of Bribery, having given the Lord Chancellor an Hundred Pounds and upwards, at one Time; besides what he might have presented him with at other Times, and distributed amongst that Lord's Servants, who were known to take a Part in every Cause that came before his Lordship.

A Decree against a just Cause, unjust.

Charging Lord Chancellor with Injustice, &c. libellous.

Wrennum's adversary succeeded by Bribery.

Fine; to wear Papers, and make Submission for sending an ironical, abusive Letter.

Star-Chamber tied by no Rules of Law, punished as expedient for public Good.

Censure for singing obscene and scurrilous Songs.

A Person for sending an ironical, abusive Letter to Sir *Baptist Hicks* was fined 500*l.* and sentenced to wear Papers, and to make his Submission to Sir *Baptist Hicks*, in *Cheapside*. *Easter Term* 16 *Jac.* 1618. *St. Ch.* *Hob.* 215. *pl.* 277. *Poph.* 140. *Hickes v. —.*

This is an Instance of the Practice of the *Star-Chamber*, which being tied to no Rules of Law, punished as was most expedient for the public Good, either according to the Malignance of the Offence, or to the Necessity there was in the Common Wealth for putting a Stop to the Crime.

The Defendants were censured for publishing and singing several Songs and Libels against the Plaintiff, one of which contained, amongst other Obscenities and Scurrilities, the following; "A proper Song of a great Blockhead, Woollen-Draper, dwelling in *Holborn*, who gave a Taylor's Wife a Yard of old Frize for

for a Jerkin, &c." The Defendants were all committed to the *Fleet*. *Bennet* was fined 500 Marks. *Aylet*, another Defendant, 200 Marks. And *Longdale* 100 Marks: *Hilary Term* 2 *Car.* 1627. *St. Ch.* Append. to 3 *Rush.* Collect. 6. *Frize v. Bennet* and others.

Commitment,
Fine.

The Defendants for writing and publishing two Letters, scandalizing the Court of Arches, and Sir *William Bird* the Judge of it, were fined; the Husband two Hundred Pounds, and the Wife one Hundred, and both committed to the *Fleet*; and *Moody* was sentenced to come into this Court in an humble and submissive Manner, and, under his Hand, acknowledge his great Offence in falsely scandalizing the said Judge and Court. *Easter Term* 3 *Car.* 1628. *St. Ch.* Append. to 3. *Rush.* Collect. 7. *Whitacle v. Moody* and his Wife.

Fine for scandalizing the Court of Arches and the Judge of it.

Commitment
and Submission.

For a seditious Libel against the privy Council and the Judges, Defendant was committed to the *Fleet* during the King's Pleasure, and sentenced to pay a Fine of three Thousand Pounds. *Idem* 8. *The King v. Perkins.*

Seditious Libel-
ler of privy
Council and
Judges, commit-
ted and fined.

The Defendant, for publishing a scandalous Libel against the Plaintiff, was committed to the *Fleet*, fined one Hundred Pounds, and ordered to make an humble Acknowledgment and Submission to the Plaintiff at *Worcester* Assizes, the Judges sitting, and the Decree to be then and there read. *Easter Term* 5 *Car.* 1630. *Id.* 21. *Bishop of Worcester v. Boyer.*

Publisher of Li-
bel against a pri-
vate Person com-
mitted, fined,
and to make Ac-
knowledgment
and Submission.

These being all *Star-Chamber* Cases, are so many further Proofs of that Court's punishing according to the Malignance of the Offence, and Dignity of the Character affronted. *Bennet's* Case is a remarkable Instance of the Court's construing a Parcel of Quibbles, such as *Yard*, *Frize*, &c. into a Libel; a Proof of what has been so often laid down, that nothing which imports an ill Meaning, shall escape for the Ambiguity, or Insufficiency of the Expression; and indeed, if it were otherwise, Justice might be well said to be blind, since she must necessarily overlook Things which the whole World besides saw clearly and fully.

Punishment ac-
cording to Ma-
lignance of Of-
fence, and Digi-
nity of Charac-
ter affronted.

Nothing imper-
ting an ill Mean-
ing shall escape
for Ambiguity or
Insufficiency of
Expression.

One was indicted for exhibiting an infamous Libel directed to the King against *Coke* the Chief Justice of the *King's Bench*, and the Court, for a Judgment given in the said Court in *Magdalen College* Case, affirming the said Judgment to be Treason, and calling the Chief Justice Traitor, perjured Judge, and scandalizing all the Professors of the Law: And this Libel, he fixed upon the

Commitment,
Pillory, with Pa-
per, Imprison-
ment, bound to
good Behaviour
for Life, and fine
for Libel, on
Court of *King's*
Bench.

great

great Gate entring Westminster-Hall, and divers other Places. And being arraigned, he put in a scandalous Plea, affirming he would not plead otherwise, it was adjudged, that he should be committed to the *Marshal*, stand upon the Pillory with Paper mentioning the Offence, and he imprisoned till he submit himself to every Court, be bound to his good Behaviour, with Sureties during Life, and pay 1000*l.* Fine to the King. *Michaelmas Term 5 Car. 1630. K. B. Cro. Car. 175. 15 Vin. Abr. 89. pl. 5. The King v. Jeffs.*

Author and Publisher of *An Appeal to the Parliament, or Sion's Plea against Prelacy*, imprisoned for Life, fined, degraded; whipped and pilloried;

to lose Ears, Nose to be slit, Face branded with a double S.

The Defendant, for writing and publishing a seditious Libel, entituled, *An Appeal to the Parliament, or Sion's (a) Plea against Prelacy*, was sentenced to be imprisoned in the *Fleet* for Life, unless the King please to enlarge him, to pay a Fine of 10,000*l.* referred to the High-commission Court, to be degraded of his Ministry, and then to be whipped at the Pillory at *Westminster*; and standing on the Pillory to lose one of his Ears, his Nose to be slit, and his Face branded with a double S. and in like Sort to be whipped, and lose his other Ear at the Pillory in *Cheapside (b)*. *Easter Term 6 Car. 1631. Id. 29. The King v. Leighton.*

(a) It contained some warm, imprudent Invectives against the Prelates, and the Conduct of those in Power. Soon after the Publication of the Work, without an Information upon Oath, or legal Proof who was the Author, *Leighton*, as he was coming from Church, was arrested by two High-commission Pursuivants. They dragg'd him to the House of *Laud*, where he was kept till seven in the Evening, without Food. *Laud* returning Home at this Time in great Pomp and State, with *Corbet*, Bishop of *Oxford*, *Leighton* demanded to be heard. The haughty *Laud*, did not deign to see him, but sent him to *Newgate*: He was clapped into Irons, and confined in an uninhabitable Apartment, where, notwithstanding that the Weather was cold, and the Snow and Rain beat in, there was no convenient Place to make a Fire. From *Tuesday* Night to *Thursday* Noon, he was unsupplied with Food; and in this infernal Dwelling was kept fifteen Weeks, without any Friend, not even his Wife, being suffered to come near him. His own House was in the mean Time rifled by the Officers of the High-commission Court; his Wife and Child treated by these Ruffians with great Barbarity; himself denied a Copy of the Commitment; and the Sheriffs of *London* refused to bail him, on his Wife's Petition. At the End of the fifteen Weeks, he was served with a Subpoena. *Heath*, the Attorney General, on an Assurance that he should come off well, extorted a Confession from him, that he was the Author of the Book. 2 *Macaul. Hist. Engl. 96.*

(b) It is said, that when this Sentence was pronounced, Bishop *Laud* pulled off his Cap, and gave God Thanks for it. 2 *Macaul. Hist. Engl. 98.*

On

On *Friday November* the 16th, Part of his Sentence was executed in this Manner, in *New Palace-Yard* at *Westminster*, in Term Time, he was severely whipped, then put in the Pillory, where he had one of his Ears cut off, one Side of his Nose slit, branded in one Cheek with a red hot Iron with the Letters S. S. and afterwards carried back again Prisoner to the *Fleet*, to be kept in close Custody. On that Day Se'ennight, his Sores upon his Back, Ears, Nose and Face, not being cured, he was whipt again at the Pillory in *Cheapside*, and there had the Remainder of his Sentence executed upon him, by cutting off the other Ear, slitting the other Side of the Nose, and branding the other Cheek. Dr. *Leighton*, in his own Account of this horrid Execution, adds, that the Hangman was made half drunk, and enjoined to perform his Office with Ferocity; that he stood, after receiving the Punishment of the Lash, almost two Hours in the Pillory, exposed to Frost and Snow, and then suffered the rest; that being with these Miseries disabled from walking, he was denied the Benefit of a Coach, and carried back to Prison by Water, to the farther endangering his Life.

Sentence cruelly executed.

Sores on Back, &c. not cured.

Hangman made half drunk, enjoined to use Ferocity,

Defendant exposed to Frost and Snow, disabled from walking, carried by Water.

I have been more particular in my Account of this barbarous Exertion of Power, because almost every other Historian, either from tenderness to the Character of the Government, or from Motives of abhorrence to the Nature of the Offence given by the wretched Sufferer, has past it over in a very slight Manner. 2 *Macaul. Hist. Engl. 98, &c.*

The barbarous Exertion of Power in the above Execution particularly mentioned here, because passed over by the Generality of Historians.

For scandalizing the Lord Keeper *Coventry*, by Letters and Memorials; in which, calling him by the Name of Sir *J. K.* they term him an unjust Judge, and a Decree made by him an unjust Judgment: and accusing him of Bribery and Corruption, &c. and presenting a Petition to the King to that Effect, &c.

Libel on Lord Keeper *Coventry*.

Bonham Norton, the principal Offender, was fined 3000*l.* to acknowledge, at the *Chancery Bar*, with a Paper on his Head declaring his Offence, that the Decree of that Court between him and *Baker* was just, and agreeable to the Rules of Equity and Conscience; and then humbly to acknowledge his Offence, and ask his Majesty and the Lord Keeper Forgiveness; and to make the like Acknowledgment and Submission in this Court, and at the Assizes at *Salop*, where the Decree shall be read.

Fine, Acknowledgment, Paper,

Submission.

Lee and *May*, his Agents and Instruments in raising and publishing the Scandals and Memorials were committed, and fined

Commitment,

Fine,

1000*l.*

To ride with
Face to Horse's
Tail.

Papers.

Pillory.
Ears nailed.
Imprisonment
for Life.

Commitment,
Fine, &c.

Serjeant at Law
reproved for ad-
vising a Libel,
not to practice
till Submission.

Damages.

Accomplices in a
Libel against a
great Officer of
State justly pun-
ishable with
Severity.
Disguising Names
and Characters.

J. K. construed
Lord Keeper
Coventry.

Author of "*The
State of Flint-
shire.*"

Committed,
fined, pilloried.

1000*l.* apiece, and to ride to *Westminster* from the *Fleet*, with their Faces to the Horse's Tail; and at the *Chancery* Bar, and in this Court, with Papers on their Heads declaring their Offence, to acknowledge it, and ask Forgiveness for it, and then be set on the Pillory with one Ear nailed to it, while the Courts sit; and another Day to ride into *Cheapside* in such Manner as before, and there be set on the Pillory with their other Ear nailed to it, and be carried to Prison, there to remain during Life.

John Norton for contriving the Cases, and petitioning the King, and publishing the Scandal, was committed, fined 100*l.* and to ask Forgiveness at the Bar.

Hingate, for malicious Publication of the Scandals, same Sentence with *John Norton*.

Smith, Diggs, Winslow, and Harper, the same Sentence.

Ashley Serjeant at Law, reproved for advising, and not to practice before the Lord Keeper, until he made a private Submission to him.

The Defendants to pay 3000*l.* Damages to the Lord Keeper. *Michaelmas Term 6 Car. 1631. Append. to 3 Rusb. Collect. 30. The King v. Norton and Others.*

The Slander in this Case was against a great Officer of the State, and therefore justly punishable with great Severity, upon all the Accomplices. It is remarkable, that such Offenders, in all Ages, had Recourse to the Subterfuge of disguising Names and Characters; but at the same Time we discover how little it availed them. One would be apt to think at first Sight, that a Libel upon Sir J. K. no way concerned the Lord Keeper *Coventry*; but, without Doubt, the Hints, Surmises, Insinuations, and Suggestions of the Libel, were strong enough to shew the Intention of the Maker; and the Libels were accompanied with Circumstances and Accidents, which put it beyond all Doubt who was intended to be abused by them.

The Defendant wrote several Libels, one, amongst the rest, that looked like Madness rather than Sedition, which he entituled, "*The State of Flintshire*;" and therein set forth, "That the King was deposed, the Authority of the Privy Council abrogated, the Bishop of *Chalcedon* made King, the Inhabitants of *Flintshire* his Slaves, and Sir *John Bridgman*, and Sir *Marmaduke Lloyd*, Knts. his Justices, &c."

He was committed to the *Fleet* during Life, fined 1000 Marks, and sentenced to be set on the Pillory at *Westminster*, and at the

the Assizes for *Flintshire*, with one Ear nailed to each Place, and a Paper on his Head declaring his Offence, and there to shew himself heartily sorry and penitent. *Hilary Term 6 Car. 1631. Id. 33. The King v. Morgan.*

Mercer, for framing and publishing two scurrilous Libels against the Plaintiff, his Wife and Daughter, was committed to the *Fleet*, fined 1000*l.* bound to his good Behaviour during Life, and disabled ever to practise as an Attorney in any Court; and if he were then an Attorney, to be thrown over the Bar, and to stand in the Pillory at *Westminster*, and at *Lancaster Assizes*, with a Paper on his Head declaring his Offence, and then to make an Acknowledgment, and to ask the Plaintiffs Forgiveness.

Attorney for a Libel committed, fined, bound to good Behaviour disabled to practise, to be thrown over the Bar, pilloried. Paper. Acknowledgment. Forgiveness.

Bryers, for publishing one of the Libels, committed and fined 200*l.* and both to pay the Plaintiff Damages. *Easter Term 7 Car. 1632. Id. 35. Moore v. Mercer and Others.*

Publisher of the above Libel committed, fined. Damages.

Defendant a Justice of Peace, received scandalous and libellous Articles against the Plaintiff an Attorney, and published them in Court, with reviling Words of the Plaintiff, but would not give him a Copy of them, nor let him be tried upon them; for these Offences he was committed to the *Fleet*, and fined 200*l.* *Easter Term 7 Car. 1632. Id. 35, 36. Caston v. Hitcham.*

Justice of Peace misbehaving himself in his Office, committed, and fined.

Defendants for printing and publishing scandalous Pamphlets against the Plaintiff, were committed to the *Fleet*; *Crokey* fined 200*l.* and *Wright* 100*l.* the Decree to be read at the Assizes to clear *Smith's* Reputation, and *Crokey* then to acknowledge his Offence, and ask him Forgiveness, and the Books there to be publicly burnt. *Trinity Term 7 Car. 1632. Id. 37, 38. Smith v. Crokey and Others.*

Printer and Publisher of scandalous Pamphlets committed, fined. Acknowledgment. Forgiveness. Books burnt.

These Cases afford us nothing more observable, than the Variety of their Sentences, which confirm what has been so often said, that the Degree of the Crime serves to direct the Judges in the Punishment.

Degree of Crime directs the Punishment.

The Defendant wrote to the Earl of *Northumberland*, and subscribed with his Name a scandalous and abusive Letter, importing also a Challenge.

Author of a scandalous abusive Letter, and Challenge to a Peer.

He was therefore committed to the *Tower* during the King's Pleasure, fined 5000*l.* bound to his good Behaviour during Life, forbid to come within the Verge of the King's Household, disabled to have or execute any Office, and to acknowledge his Offence to the King, and the Lords of this Court, upon his

Committed to *Tower*, fined, bound to his good Behaviour for Life, not to come within Verge of Court, disabled from all Offices. Acknowledgment.

Knees,

Q

Submission.	Knees, and then ask his Majesty's Pardon, and make such Acknowledgment and Submission to the Earl of <i>Northumberland</i> as his Lordship should require or direct, in the Presence of the Earl Marshal, and such others as the Earl of <i>Northumberland</i> should think proper. <i>Hilary Term 9 Car. 1634. Id. 67, 68. The King v. Apfley.</i>
Author of "Histrionastix."	<i>Pryn</i> , for writing a Book, called " <i>Histrionastix</i> ," containing many libellous Passages upon the Court, and some seditious Insinuations against the King and Queen, was censured here: The
Book burnt.	Book was ordered to be burnt by the Hands of the common
Author put from the Bar, expelled <i>Lincoln's Inn</i> , degraded, expelled <i>Oxford</i> , pilloried, Ears cut off,	Hangman before his Face, and the Author sentenced to be put from the Bar, excluded from the Society of <i>Lincoln's Inn</i> , and degraded and expelled the University of <i>Oxford</i> : He was also sentenced to stand in the Pillory in two Places, viz. <i>Westminster</i> and <i>Cheapside</i> , on two different Days, to have one of his Ears cut
Paper,	off each Day, to wear a Paper on his Head importing that he suffered for a grievous Offence, viz. an infamous Libel against
fined,	both their Majesties, the State, and Government, to pay a Fine of
perpetual Imprisonment.	five thousand Pounds to the King, and to suffer perpetual Imprisonment.
Licensor imprisoned,	<i>Buckner</i> (a) the Bishop's Chaplain, for licensing this Book, was sentenced to suffer Imprisonment according to the Course of
fined.	the Court, and pay fifty Pounds as a Fine to the King. <i>Michael</i>
Printer and Publisher pilloried,	<i>Sparkes</i> , for printing and publishing the said Book, was sentenced
Paper, fined.	to stand in the Pillory, with a Paper on his Head declaring his Offence, and to pay a Fine of 500 <i>l.</i> to the King. <i>Hilary Term 9 Car. 1634. St. Tri. 279, &c. Append. to 2 Rush. Hist. Col. 69. The King v. Pryn, Buckner, and Sparkes.</i>
Mrs. Macaulay's Account of another <i>Star-Chamber</i> Sentence.	<i>Mrs. Macauley</i> , a modern Historian of great Repute, has given us a very affecting Account of the Execution of another severe Sentence against this Gentleman, and two others, for a Libel, a few Years afterwards, in the same Reign, which, together with
The Historian's Reflections.	the spirited and judicious Reflections thereon, seem most proper to close the Report of the Proceedings of the <i>Star-Chamber</i> , and are therefore here inserted.
Cruel Sentence cruelly executed. Hangman barbarous.	The cruel Sentence passed on <i>Prynne</i> , <i>Burton</i> , and <i>Bastwick</i> , was yet more cruelly executed: The Hangman performed his

(a) He was used with this Lenity, because he avowed to the Court, that he approved of all the Ceremonies then used in the Church; Church Music he did allow of, and bowing at the Name of *Jesus*. 2 *Macaul. Hist. Engl. 161.*

bloody Office with an approved Barbarity. *Burton's* Ears were taken off so close, that a considerable Branch of the temporal Artery was wounded, and the Blood streamed down the Scaffold. *Prynne's* were hacked barbarously; he lost a large Piece of his Cheek with the Remainder of his Ears, and the Executioner applied the burning iron twice to the branding of one Cheek. The patient and even magnanimous Behaviour of the Sufferers heightened the Pity and Inclination of the People: They crowded with Impatience round the Scaffolds, and every Wound given by the Executioner produced an universal Groan and Lamentation. The three Heroes of this tragic Scene harangued the Populace in their Turns: *Prynne*, with some Sense and Dignity, told them, that rather than have his Cause a leading Cause to deprive the Subjects of their Liberty, he had exposed his Person to be a leading Example to bear that ignominious Punishment; he proved to them the Illegality of the Sentence passed on himself and Fellow-Sufferers; that there was no Law in the Realm that authorized such Tyranny, the Statute of *Queen Mary* [1 & 2 *Pb.* & *M.* c. 3. expired.] limiting the Punishment of a Libeller, even of the King or Queen, to a Fine of one hundred Pounds, and one Month's Imprisonment, no corporal Punishment, unless the Delinquent refuses to pay the Fine; in the Statute of *Elizabeth*, [2 & 3 *El.* c. 12. expired.] the Penalty was heightened to a Fine of two hundred Pounds, and three Months Imprisonment; but no Censure to be passed, unless it was fully proved by two Witnesses, who were to produce a Certificate of their good Demeanor, for the Credit of the Report, or else the Crime to be confessed by the Libeller.

From what Mr. *Prynne* here advances, it is plain, that heavy (a) Fines, long Imprisonment, and those ignominious Punishments of Whipping and the Pillory, for writing Libels, are contrary to Statute Law. That they are inconsistent with Liberty is obvious; since it is incongruous to the Privileges of a Freeman to

Ears taken off so close that temporal Artery wounded.

Prynne's Ears hacked. Cheek tore. Burning Iron applied twice.

Execution produced Groans, &c.

Populace harangued.

Prynne bore the Punishment for the Sake of Liberty.

Sentence illegal.

Punishment of Libeller even of King or Queen by Law ought not to exceed 100*l.* Fine, one Month's Imprisonment, unless Payment of Fine refused, by Statute Law Fine 100*l.* and 3 Months Imprisonment. No Censure unless 2 Witnesses.

Heavy Fines, long Imprisonment,

Whipping and Pillory for Libels contrary to Statute Law, inconsistent with Liberty.

(a) *Prynne's* Sentence for "*Histrionastix*," has been generally considered as cruel and arbitrary: My Lord *Clarendon* censures it as an impolitic Thing, to punish a Gentleman of his Note and Education in so disgraceful a Manner. I am inclined to believe it is contrary to the Dictates of the Common Law, which directs corporal Punishment only for such as can't afford pecuniary Mulets, except the Crime be very infamous. *Nobiles magis plectuntur Pecunia, Plebei vero in Corpore. Aliter puniuntur ex eisdem Factionibus servi, quam liberi.* These, and sundry other Maxims, shew that the Condition of the Offender is to be regarded in the Nature of his Punishment.

Constitution never purged from Venom of Star-Chamber.

be subject to these slavish Corrections, for other than for Crimes that debase his Nature as a Man. The Constitution of this Country has never been purged from the Venom with which it was infected by the Erection of the *Star-Chamber*: It's infamous Doctrine and servile Discipline have in many Instances been adopted in the Courts of Common Law. 2 *Macaul. Hist. Engl.* 247, &c.

The Writer and Vender of *The Speeches and Prayers of the King's Judges*, and Publisher of *the Phoenix*, or *the solemn League and Covenant*, fined and pilloried.

The Defendant for a Misdemeanor in writing and selling a Libel, intituled, *The Speeches and Prayers of the late King's Judges*, and also for publishing a Libel, intituled, *The Phoenix*; or, *the solemn League and Covenant*, was sentenced to pay a Fine of an hundred Marks, and to stand in the Pillory. *Easter Term 15 Car. 2. 1663. K. B. Stat. Tri. 982. The King v. Thomas Brewster.*

Printer, Publisher and Seller of the said Speeches fined, pilloried, committed without Bail,

The Defendant *Dover* being found guilty of printing and publishing, and the Defendant *Brooks* of selling the said Speeches, were each of them sentenced to pay a Fine of forty Marks, to be set two several Days in the Pillory, and to be committed without Bail, till the next Sessions, when and where they should make an open Confession of their Offences, in such Words as should be prescribed by Authority, and afterwards be imprisoned, during the King's Pleasure; and on their Discharge, should enter into Recognizances of 400*l.* each, with two Sureties in 200*l.* each, not to print or publish any unlicensed Books. *Easter Term 15 Car. 2. 1663. K. B. St. Tri. 982. The King v. Simon Dover and Nathan Brooks.*

confess Offences, imprisoned during Pleasure,

bound not to print or publish unlicensed Books.

Obscenity punished by Fine, Imprisonment, and to be of good Behaviour.

The Defendant confessing an Indictment for several obscene Misdemeanors, the Court considered what Judgment to give, and in as much as he was a Gentleman of very ancient Family, (out of the County of *Kent*) and his Estate incumbered (not intending his Ruin but his Reformation) they fined him only 2000 Marks, and to be imprisoned for a Week without Bail, and to be of good Behaviour for three Years. *Michaelmas Term 15 Car. 2. 1663. K. B. Sid. 168. pl. 29. The King v. Sir Charles Sedley.*

Writer and Publisher of a scandalous and abusive Letter fined.

Saunders was fined forty Marks, for writing a scandalous and abusive Letter to Mr. *Hatton Rich*, his Debtor, *That if he had Honesty, Civility, or Humanity, he would not deal so, but would go to Hell and be damned for Cheating*, and for publishing the same in *Præsentia quamplurimorum*. *Michaelmas Term 22 Car. 2. 1670. K. B. T. Raym. 201. The King v. Saunders.*

The

The Defendant had Judgment for Blasphemy, viz. To stand in the Pillory in three several Places, viz. at *Westminster*, *Cheapside*, and *Exchange*, and likewise at *Guildford*, where the Words were spoken, with a Paper for horrid Blasphemy tending to subvert all Government; and further to pay 1000 Marks Fine, and to find Sureties for his good Behaviour during Life. *Hilary Term 27 Car. 2. 1675. K. B. Ventr. 293. 3 Keb. Rep. 621. pl. 94. Trem. Entr. 227. 2 Stra. 789. The King v. Taylor.*

Blasphemy punished with Pillory, and Paper of the Offence, Fine, and Surety for good Behaviour during Life.

The Defendant being convicted of Sedition, the Court took Time to set the Fine, and immediately committed the Defendant, (who before was upon Bail) as the Course is when Judgment is given, although no Fine was set. *Ventr. 325.* He was afterwards fined 1000*l.* and found Surety of good Behaviour for seven Years; and to renounce his Error in open Court. *Hilary Term 29 Car. 2. 1677. 3 Keb. Rep. 842. The King v. Harrison.*

Sedition punished with Fine, and Surety of good Behaviour seven Years, and to renounce Error in open Court.

An Information was preferred against the Defendant for publishing several scandalous Libels, and he was found guilty of one only, called, "The long Parliament dissolved." He was fined 1000 Marks, and was to be bound to his good Behaviour for seven Years, and to stand committed till he paid his Fine. *Trinity Term 29 Car. 2. 1677. Freem. Rep. 456. pl. 620. The King v. Browne.*

Publisher of "The long Parliament dissolved," fined, bound to good Behaviour, and committed till fine paid.

Elizabeth Cellier, for writing and publishing a scandalous Libel, containing some Reflections upon the Administration, and the Judge, in relation to the Popish Plot, and the Treatment which the Persons accused of it met with, received the following Sentence. To be fined 1000*l.* and be committed in Execution till that be paid; to be set on the Pillory three several Days in three several Places, with a Paper importing her Crime, and stand each Time an Hour, viz. In the *Strand* near the *Maypole*, in *Covent-Garden*, and at *Charing-Cross*, and to have Parcels of her Books burnt at each Place before her; and lastly, to find Securities for her good Behaviour during Life. *32 Car. 2. 1680. at the Old Bailey. 2 St. Tr. 584. The King v. Cellier.*

Writer and Publisher of Reflections upon the Administration, the Judge, &c.

fined, committed till paid, Pillory,

Paper,

Books burnt, bound to good Behaviour.

Aaron Smith received Sentence, for writing a Paper full of scandalous Reflections upon the King and Government, and delivering it as Instructions to *Stephen Colledge* upon his Trial at *Oxford*. The libellous Expressions were, "That the Government might as well have hanged him at *Tyburn* as he came by, as brought him thither only to Murder him in a little more

Writer of Reflections on King and Government.

fin'd,
committed till
paid,
pilloried,
bound to good
Behaviour.

Publisher of a
Libel on King
James the Se-
cond,

fin'd,
pilloried,
Paper,
whipt.

Fine, Security
for good Beha-
viour for a Libel
against the Bi-
shops.

King's Bench
follows Star-
Chamber
Examples.

Cases of *Danger-
field* and *Baxter*,
Instances of Se-
verity.

Speaker of the
House of Com-
mons fined
10,000 *l*.

the heaviest Fine,
that ever was,

more (a) Formality." The Judgment was, That he should pay a Fine of 500*l*. be committed till it was paid, stand upon the Pillory twice, and be bound to his good Behaviour for a Twelve-month. *Michaelmas Term 35 Car. 2. 1683. K. B. Skin. 124. pl. 3. The King v Smith.*

Dangerfield was convicted of publishing a Libel, wherein he had accused King *James* the Second, (when Duke of *York*) that he had hired him to kill the late King *Charles*, &c. on *Friday June* the 20th he was brought to the Bar, and received Sentence to pay a Fine of 500*l*. to stand twice in the Pillory, to go about *Westminster-Hall* with a Paper in his Hat signifying his Crime, on the *Thursday* next to be whipt from *Aldgate* to *Newgate*, and on *Saturday* following from *Newgate* to *Tyburn*: All which was executed accordingly. *Trinity Term 1 Jac. 2. 1685. K. B. 3 Mod. 68. The King v. Dangerfield.*

Mr. *Baxter* was fined 500*l*. and ordered to give Security for his good Behaviour for seven Years, for libellous Words against the Bishops, contained in a Book of his writing. *Trinity Term 1 Jac. 2. 1685. K. B. 3 Mod. 69. Trem. Entr. 47. The King v. Baxter.*

Whatever might be the Practice of the *King's Bench*, in earlier Times, we find that latterly it has followed the Examples laid down by the *Star-Chamber*, for punishing variously, according to the Nature of the Offence; more especially since the Suppression of that Court, when the *King's Bench* found left to itself the Correction of a great many Enormities, which before were punishable in the *Star-Chamber*; and indeed the Cases of *Dangerfield* and *Baxter* are Instances of as much Severity as ever that Court had shewn upon the like Occasions.

Sir *W. Williams*, who had been Speaker of the House of Commons, for publishing an infamous Libel, called, *Dangerfield's Narrative*, was fined by the Court 10,000*l*. but upon paying 8000*l*. of it, Satisfaction was acknowledged upon Record. *Easter Term 1 Jac. 2. 1685. K. B. 2 Show. Rep. 471. pl. 436. Comb. 19. The King v. Williams.*

As the Proceedings in this Case were very extraordinary, so was the Punishment; the Fine was the heaviest that ever was im-

(a) One was indicted for a Libel in scandalizing the King's Witnesses, and reflecting on the Justice of the Nation, and had Judgment of Pillory and Fine. 4 *Read. Stat. Law. 155.*

posed

posed in any Court, for the like Cime, Sir *Bartholomew Shower*, one of the Reporters of this Case says, that Sir *W. Williams* being fined 10,000*l.* paid 8000*l.* of the Money, and thereupon Satisfaction was acknowledged upon Record. I own, when I find Sir *William Williams*, in this same Reign, most violently persecuting the seven Bishops for a Libel, in the Character of Solicitor General; I am apt to think that the Fine was imposed in *Terrorem* to others, and that the only Purpose of suing Sir *William Williams*, was to make a Precedent of an Insult upon the *Commons*, whose Privileges, if the Designs then on Foot had prevailed, must soon have fallen to nothing.

8000*l.* being paid Satisfaction acknowledged.

Speaker afterwards Solicitor General and violent against the seven Bishops.

Fine imposed in *Terrorem*.

Speaker sued to insult the *Commons*; their Privileges in Danger.

I am aware of an Act of Parliament in *Henry the (a) Eighth's* Reign, which secures the Members of the *House of Commons* from any Charges or Accusations, for Things said or done within the House, as appears in the Case of *The King v. Sir John Elliot, &c.* which was adjudged against them in the *King's Bench*, 5 *Car.* 1630. *K. B. Cro. Car.* 181. *pl.* 6. *id.* 604.

Members of Parliament secured from Accusations by Statute, for any Thing in the House.

The King v. Sir John Elliot, &c.

But by a Vote of the *Commons*, Saturday the 23d of November 1667. 17 *Car.* 2. that Judgment was resolved to be against the Rights and Privileges of Parliament, and afterwards reversed by Writ of Error before the Lords.

Judgment voted illegal, and reversed.

With Regard to the Resolutions of the two Houses (says the Learned Editor of the Quarto Statutes at Large,) it must be remembered, that they were formed *flagrante Irâ*, on Occasion of the Debate concerning the arbitrary Proceedings against Sir *John Elliot, Denzil Hollis, &c.* a Time when the Contests between *Privilege* and *Prerogative* were carried to the most desperate Extremes; and when many unwarrantable Claims were asserted on each Side, and endeavoured to be supported by straining every Kind of Evidence which could give Colour to unjustifiable Conclusions. *Ruff. Pref. to Stat.* IX.

Resolutions formed *flagrante Irâ*.

Privilege and Prerogative carried to Extremes.

This Point however, concerning the Freedom of Parliamentary Debate, was happily adjusted at the late Revolution; and it is declared by the Bill of Rights, " That the Freedom of Speech,

Freedom of Parliamentary Debate adjusted at the Revolution.

(a) Stat. 4 *Hen.* 8. c. 8. This memorable Act is concerning *Richard Strode*. This Act has been marked, both by Mr. Serjeant *Hawkins* and Mr. *Cay* as a private Act; nevertheless it has been by great Authorities considered as a general Law. Lord *Coke* says, that the latter Branch of the second Clause of it is general, and declaratory of the ancient Law and Custom of Parliament. 4 *Inst.* 9. And this Opinion is supported by a Resolution of the *House of Lords*, which may be seen in *Ruff. Pref. to Stat.* VIII.

and

and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament," *Ruff.* as above.

Law clear to any Thing within the House, whether Privilege of Parliament can justify publishing a Libel.

Common Wisdom to discern their Rights, and Power to secure them.

The Author of "An Address to the Protestants of the Army."

Fined, pilloried, whipt, and degraded.

The Law is clear as to any Thing within the *House*; but whether the Privileges or the Orders of the *House* can justify a Member, or other Person, for doing a wrong Thing without Doors, as publishing a (a) Libel, or so forth, may be still a Doubt in Point of Law; tho' there is no Doubt but if the *Commons* claim such Privileges, they must be allowed to them; for they are to be presumed to have Wisdom to discern their own Rights, and Power sufficient to secure them.

The Defendant (who was the Author of "*Julian the Apostate*") being now again convicted on a Trial at the Bar, for publishing another seditious Libel, intituled, "*An Address to the Protestants of the Army*," he took several Exceptions thereto; as that the Information was *inter al*, and the Whole was recited except *Finis*; but that was over-ruled, and the Jury had now found it so; and if any Advantage could be taken upon that, it must be upon the Trial: He excepted that there was no Averment, that there was an Army in *England*; but that was over-ruled likewise; and his Behaviour being very insolent, he was sentenced to the Pillory three Days, and to be whipp'd from *Newgate* to *Tyburn*, and fined 500 Marks. And because the Punishment was thought infamous, therefore Direction was given for Care to be taken that he should be (b) degraded before he suffered that Punishment: And accordingly the Record, and Mr. *Johnson* both, were brought before the Right Reverend Fathers in God, the Lord Bishop of *Durham*, the Lord Bishop of *Rockester*, and the Lord Bishop of *Peterborough*, (Commissioners appointed by his Majesty to exercise all Manner of ecclesiastical Jurisdiction within the Diocese of *London*, during the Suspension of the Lord Bishop of *London*) who with several of the most eminent Divines of the City, met in the Chapter-house of *St. Paul's*, where the said Defendant, according to the ecclesiastical Laws, in a full Court, received Sentence of Degradation, and was degraded and devested accordingly, and delivered over as a meer Lay Person into the Hands of the secular Officer, to undergo the Punishments above mentioned. *Michaelmas Term 2 Jac. 2. 1686. K. B. 2 Show. Rep. 488. pl. 454. Comb. 36. The King v. Johnson.*

(a) See Chap. 17.

(b) See *fol. Bedford's Case.*

The Defendant wrote several false and scandalous Libels against the King, tending to subvert the Government; for which he was fined 500 Marks, and ordered to appear at the Assizes at Exeter, and to make Submission in a Form of Words to be prescribed him, with a Paper denoting his Offence; but the last Day of the Term his Fine was remitted 100 Marks. *Michaelmas Term 10 Wil. 3. 1698. K. B. 12 Mod. 221. Ld. Raym. 418. The King v. Beare.*

Fine, and Submission, with Paper, for writing Libels against King William the Third.

Part of Fine remitted.

An Information was filed against the Defendant for writing a Letter to Sir John Pigot, desiring him to moderate his Zeal, for that the King, meaning King James the Second, would be soon restored; and that for further Satisfaction herein, he would soon hear that many Lords would repair to him to France; what to do he might guess: And being found guilty he was fined twenty Marks, and committed till Payment. *Michaelmas Term 11 Wil. 3. 1699. K. B. 12 Mod. 311. The King v. Laurence.*

Writer of Letter that King James the Second would be soon restored, &c.

fined, and committed till paid.

Fitzgerald being convicted of a scandalous Libel, was sentenced to pay a Fine of 100 Marks, and to go to all the Courts in Westminster with a Paper in his Hat. In Chancery he behaved himself impudently, for which Reason the Court increased his Punishment by Imprisonment. *Easter Term 1 An. 1702. Q. B. Salk. 401. pl. 7. The Queen v. Fitzgerald.*

Fine, and to go to Courts with Paper in Hat.

Judgment altered same Term, and Punishment increased.

Judgment of the Pillory and Fine of 40 Marks, on an Information for a Libel, called, "The Country Parson's Advice to my Lord Keeper. *Trinity Term 5 An. 1706. Q. B. 11 Mod. 86. pl. 5. The Queen v. Doctor Brown.*

Pillory and Fine for "The Country Parson's Advice to my Lord Keeper."

The Defendant having been found guilty of writing, printing and publishing a scandalous and seditious Libel, intituled, "The Hereditary Right," &c. the Court gave Judgment that he should be fined 1000 Marks, imprisoned for three Years without Bail or Mainprize, and upon his Delivery find four Sureties in 5000*l.* for his good Behaviour during Life; and that upon the next Friday he was to be brought up and shewn to all the Courts sitting in Westminster-Hall, with a Paper in his Hat expressing the Crime and the Judgment, and was committed to the Marshal.

The Printer and Publisher of "The hereditary Right," &c. fined, imprisoned; to find Sureties for his good Behaviour during Life; to be shewn to all the Courts in Westminster-Hall, with a Paper in his Hat.

Upon Friday Mr. Kettleby, Defendant's Counsel, moved the Court upon a Paper which was delivered in and read; it was under the Privy Seal signed by Her Majesty, and directed to the Lord Chief Justice, the Justices of the Court, the Sheriffs of London and Middlesex, and Marshal of the Queen's Bench, and imported a Recital of the Conviction and Judgment, and that he had

The ignominious Part of the Judgment (Defendant being a Clergyman) was remitted by a Paper under the Privy Seal, signed by the Queen.

R

humbly

humbly represented to Her Majesty by Petition, that he was a Clergyman of the Church of *England*, and prayed that the ignominious Part of the Sentence might be remitted; These are therefore to require you and every of you, not to put in Execution that Part of the Judgment, which is that he be brought to the Courts in *Westminster-Hall*, &c. and for your so doing this shall be your and every of your sufficient Warrant.

Court discharged
Marshal of his
Attendance, and
considered how
Judgment ought
to be entred up.

The Court immediately made a Rule to discharge the Marshal of his Attendance with him that Day, and said they would consider how the Judgment ought to be entred up. 12 *An.* 1711.

2. *B. Gilb. Cas.* 297. *The Queen v. Bedford.*

Pillory for a Li-
bel with only
first and last Let-
ters of Name.

The Defendant was set in the Pillory for a Libel which had only the first and last Letter of the Name; for the Court said they would make it Sense. *Trinity Term* 12 *An.* 1711. 2. *B. 2 Sef. Cas.* 30. *The Queen v. Hurt.*

Publisher of se-
ditionous Words,
fined, whipped,
kept to hard
Labour.

The Defendant being convicted of publishing seditious Words, was fined twenty Nobles, and to be whipt in the House of Correction, and to be there kept to hard Labour for the Space of one Month. *Michaelmas Term* 4 *Geo.* 1718. *K. B. MSS. The King v. Nash.*

Preacher of se-
ditionous Sermon,
fined, pilloried,
Surety for good
Behaviour.

The Defendant being convicted of publishing a seditious Sermon, was fined 300*l.* ordered to stand upon the Pillory twice, and to find Security for his good Behaviour during Life, himself in the Sum of 1000*l.* and two Sureties in 500*l.* each, *Michaelmas Term* 5 *Geo.* 1719. *K. B. MSS. The King v. Blifs, Clerk.*

One fined on
Confession in
Court that he
was the Author
of a Libel.

On the Defendant his confessing himself the Author of a Libel against a Doctor of Divinity in the University of *Cambridge*, he was committed till further Consideration of the Matter, and afterwards he was fined 50*l.* and ordered to find Sureties for his good Behaviour for a Year. *Trinity Term* 9 *Geo.* 1724. *K. B. Fortesc. Rep.* 201. *The King v. Doctor Middleton.* *Easter Term* 9 *Geo.* 1723. *K. B. 15 Vin. Abr.* 90. *pl.* 3. 8 *Mod.* 123. *The King v. Wiatt.* And so was Doctor *Colebates* the same Term for the like Offence. 15 *Vin.* and 8 *Mod.* as above.

Doctor Colebates.

Printer and Pub-
lisher of Obsce-
nity

fined,

Surety for good
Behaviour.

The Defendant being convicted of printing and publishing a Libel, intituled, "*A Treatise on the Use of Flogging in Venereal Affairs,*" &c. was fined twenty-five Marks, and ordered to procure Security for his good Behaviour for the Space of one Year. *Hilary Term* 1 *Geo.* 2. 1728. *K. B. MSS. The King v. Curl.*

The

The Defendant being convicted of printing and publishing a For like Offence, Libel, intituled, "*The Memoirs of John Kerr of Kerland in North Britain Esquire, containing his secret Transactions and Negotiations in Scotland, England, the Courts of Vienna, Hanover, and other foreign Parts; with an Account of the Rise and Progress of the Ostend Company in the Austrian Netherlands;*" was fined fined, twenty Marks, and to stand in the Pillory at *Charing-Cross*. pilloried. Same Term. Same Defendant.

The Defendant was put in the (a) Pillory, as he well deserved, Pillory for publishing Obscenity. for publishing an obscene Libel, intituled, "*Venus in the Cloisters, or the Nun in her Smock.*" *Michaelmas Term 1 Geo. 2. 1728. 2 Str. 792. The King v. Curl.*

The Attorney (b) General now demanding Judgment against the Defendant: Mr. *Worley* strongly urged, that he might be allowed to lay before the Court the Arguments he had prepared, to induce them to be of Opinion, that this was but a small Offence to Society in general, admitting it to be any at all. And this, he hoped, was the proper Time to lay these Matters before the Court, to induce them to impose a moderate Punishment upon the Prisoner. But the Court said, that where indeed the Nature and Circumstances of an Offence are not particularly set forth upon Record, they do allow the Defendant to go out of the Record, to set forth the Nature and Circumstances of it; and therefore when Judgment is demanded upon an Indictment of Battery, the Defendant's Counsel is constantly admitted to lay before the Court Affidavits concerning the Nature of it, or else to apply for the Judge's Report. But wherever the Nature and Circumstances of the Offence entirely appear upon the Record, the Court never suffers the Counsel of either Side to harangue upon the Crime; but the Court is to judge upon it as it stands upon Record, and according to their Judgment upon it the Sentence is to be pronounced. This, they said, is the constant Case of every Libel. The present Case was exactly the same with that. And therefore the Court directly pronounced Sentence, that upon the three first Informations for the three first Books, the Defendant should be fined 25*l.* a-piece; for the last he should likewise pay the Sum of 25*l.* and for that should lie in

Judgment demanded,
Offence but small, if any,
proper Time to argue in Alleviation of Defendant's Punishment.
When Court allows Defendant to go out of Record to set forth Nature of Offence,
when the Court does not suffer it,
constant Course in Libels.
Blasphemy punished by
Fine,
Imprisonment,

(a) The Record says he was only fined 25 Marks, which were imposed on him in *Hilary* and not in *Michaelmas* Term that Year.

(b) Sir *Philip Yorke*, see fol. 24 in Notes.

for Life,
unless Security
given.

Prison a Year from henceforth; and then to continue in Prison for Life, unless he himself should be bound in a Recognizance of 2000*l.* and two others in the Sum of 1000*l.* or four in the Sum of 500*l.* each, with Condition for his good Behaviour during Life. *Easter Term 2 Geo. 2. 1729. Barnard. K. B. 266. 2 Stra. 834. The King v. Woolston.*

Printer and Pub-
lisher of "Fog's
Journal" pillor-
ied,

committed to
Bridewell to hard
Labour.

Like Punishment
for like Offence.

Paper, &c. for
like Offence.

Whipped, &c.
for like Offence.

Defendant
brought into
Court to receive
Judgment,
Information read,
Libel against the
Ministry punish-
ed by

Fine,
Imprisonment,
Surety for good
Behaviour.

The Defendant being convicted of printing and publishing a Libel, intituled, *Fog's Journal*, was sentenced to stand upon the Pillory thrice, viz. at *The Royal Exchange, Charing-Cross*, and *Temple-Bar*; and to be committed to the Prison of *Bridewell*, there to be kept to hard Labour for the Space of six Months. *Easter Term 2 G. 2. 1729. K. B. MSS. The King v. Clarke.*

The Defendant being convicted of the like Offence, was adjudged to stand upon the Pillory twice; and be kept to hard Labour in *Bridewell* for the Space of six Months. Same Term *K. B. MSS. The King v. Knell.*

The Defendant being convicted of the like Offence, was ordered to be brought to the Door of the Court in *Westminster-Hall*, (the Court then sitting there) with a Paper upon his Head denoting his Offence; and to be kept to hard Labour in *Bridewell* for the Space of one Month. Same Term *K. B. MSS. The King v. Carter.*

The Defendant being convicted of the like Offence, was committed to the Custody of the Keeper of the House of Correction at *Bridewell*, to be there whipped, and kept to hard Labour for the Space of six Months. Same Term *K. B. MSS. The King v. Anne Walker.*

On the last Day of the Term the Defendant being brought into Court, to receive Judgment, the Attorney (a) General prayed the Judgment of the Court against him; accordingly the Information was read, which charged him with publishing a Libel against the present Ministry, in a Paper (b) called, *The Hague Letter*, in one of the *Craftsmen*, and then Judge Page pronounced the Judgment of the Court to be that the Defendant should pay 100*l.* Fine, suffer one Year's Imprisonment, and until he should pay the said Fine, and likewise till he should find Sure-

(a) Sir Philip Yorke, see fol. 24 in Notes.

(b) The Libel is intituled thus on the Record, viz. "The Country Journal, or the Craftsman, by Caleb D'Anvers of Gray's Inn, Esq; Saturday, Jan. 2. 1730."

ties for his good Behaviour for the Space of seven Years, himself to be bound in a Recognizance of 1000*l.* and his Sureties in a Recognizance of 500*l.* a-piece. *Hilary Term 5 Geo. 2. 1732. 2 Barnard. K. B. 117. 2 Kel. 93. 2 Sef. Caf. 342. The King v. Franklin.*

The Defendant having been convicted for printing a scandalous Libel upon the House of Lords and Commons called, (a) *Robin's Game, or seven's the Main*; the Court now set a Fine of fifty Pounds upon him, committed him for two Years, and until he should pay this Fine, and likewise till he should find Security for his good Behaviour for seven Years. *Trinity Term 6 Geo. 2. 1733. 2 Barnard. K. B. 293. The King v. Rayner.*

The Defendant being convicted of printing and publishing a scandalous Libel highly reflecting on five several Acts of Parliament passed in the ninth Year of the Reign of His late Majesty King George the Second, was fined two hundred Marks, imprisoned for one whole Year, and at the Expiration thereof to find two Sureties for his good Behaviour during Life, himself in 500*l.* and the two Sureties in 250*l.* a-piece; and to be immediately led to all the Courts in *Westminster-Hall*, with a Paper over his Head denoting his Offence. *Hilary Term 10 Geo. 2. 1737. K. B. MSS. The King v. Nixon.*

The Defendant being convicted of printing and publishing a scandalous Libel, intituled, "N^o. 574, of The Country Journal, or The Craftsman, &c." was fined 200*l.* imprisoned for the Space of twelve Months; and after the Expiration of the said Term to find Sureties for his good Behaviour for seven Years. *Easter Term 11 Geo. 2. 1738. K. B. MSS. The King v. Haines.*

The Defendant being convicted of printing and publishing several printed Libels, intituled, "Discourses on the Miracles of our Saviour in view of the present Controversy between Infidels and Apostates," was fined sixty Pounds, and to find two sufficient Sureties for his good Behaviour for the Space of two Years, himself in 500*l.* and the Sureties in 250*l.* a-piece. *Trinity Term 19 Geo. 2. 1746. K. B. MSS. The King v. Thomas Ashley.*

The Defendant being convicted of the like Offence was fined forty Pounds. Same Term, and same Defendant.

(a) This Libel is intituled thus on the Record, viz. "Robin's Reign, or seven's the Main; being an Explanation of *Caleb D'Anvers's* seven Egyptian Hieroglyphics prefixed to his seven Volumes of the Craftsman, *jaeta est Alca*."

The

Speaker of Seditious Words of King George the Second; fined, imprisoned, Sureties for good Behaviour;

carried to Courts with Paper.

Like Sentence for same Offence.

Writer, Printer and Publisher of "The Free Inquirer,"

committed to Newgate,

to be pilloried,

to be committed to Clerkenwell Bridewell to hard Labour.

Security for good Behaviour,

fined,

remanded in Execution of Judgment.

Printer and Publisher of a seditious Libel, fined, pilloried, imprisoned,

Security for good Behaviour.

The Defendant being convicted of speaking Seditious Words of His late Majesty King George the Second, was fined five Nobles, imprisoned for two Years; after the Expiration of the said Term to find two sufficient Sureties for his good Behaviour for seven Years, himself in 500*l.* and his Sureties in 250*l.* a-piece, and that he should forthwith be carried to all the Courts in *Westminster-Hall*, with a Paper upon his Head denoting his Offence, and the Judgment of the Court thereupon. *Michaelmas Term 22 Geo. 2. 1749. K. B. MSS. The King v. John Whitmore.*

The like Sentence for the same Offence. *Same Term MSS. The King v. James Dawes.*

The Defendant being brought into Court in Custody of the Marshal by Rule, and being convicted by his own Confession of writing, printing and publishing a most horrid, blasphemous and wicked Libel, concerning the Truth of all revealed Religion in general, received the following Sentence of the Court, that he should be committed to *Newgate*, to be there kept in safe Custody for the Space of one Month; and that within the said Month he should be set in and upon the Pillory at *Charing-Cross*, at the *Royal Exchange*, and at the End of *Chancery-Lane*, near *Temple-Bar*, and at the Expiration of the said Month he should be committed to the House of Correction of *Clerkenwell*, to be there kept to hard Labour for the Space of three Years, and at the Expiration of the three Years, he should give Security for his good Behaviour during Life, himself in the Sum of 100*l.* and two sufficient Sureties in 50*l.* each, and that he should pay a Fine of 6*s.* 8*d.* and at the End of the said three Years he should be remanded to *Newgate*, in Execution of the said Judgment. *Trinity Term 29 & 30 Geo. 2. 1756. K. B. MSS. The King v. Jacob Ilive.*

The Defendant being convicted of printing and publishing a seditious Libel against the Government, received the following Judgment of the Court this Term, *viz.* That he should pay a Fine of 500*l.* that he should be set in and upon the Pillory at *Charing-Cross*; that he should be imprisoned in the *King's Bench Prison* for the Space of two Years; and after the Expiration of the said two Years, that he should give Security for his good Behaviour for five Years, himself, in 1000*l.* and two sufficient Sureties in 500*l.* each. *Michaelmas Term 29-Geo. 2. 1756. K. B. MSS. The King v. Richard Nutt.*

The Defendant being convicted of printing and publishing *"A Sixth Letter to the People of England,"* received the Judgment of the Court this Term, which was, That the Defendant should pay a Fine of five Pounds; be fet (a) in and upon the Pillory at *Charing-Cross*; be imprisoned in the *King's Bench* Prison for the Space of three Years; after the Expiration of the said Time give Security for his good Behaviour for seven Years then next ensuing, himself in 500*l.* with two Sureties in 250*l.* each; and was committed to the *King's Bench* Prison in Execution of the above Judgment. *Michaelmas* Term 32 *Geo.* 2. 1759. *K. B. MSS. The King v. Doctor John Shebbeare.*

Printer and Publisher of "*A Sixth Letter to the People of England,*"

finer,
pilloried,

Security for good Behaviour,

committed in Execution.

The Defendant being brought into Court in Custody of the Marshal, &c. ordered, That he pay a Fine of 100*l.* That he be imprisoned in the *King's Bench* Prison for the Space of three Months, and at the Expiration of the said three Months, to give Security for his good Behaviour for the Space of seven Years, himself in 500*l.* with two sufficient Sureties in 250*l.* each, and remanded in Execution of the said Judgment. *Michaelmas* Term 1 *Geo.* 3. 1760. *K. B. MSS. The King v. Doctor Tobias Smollet.*

Author of a Libel on Admiral Knowles,

imprisoned,

Security for good Behaviour,

remanded.

The Defendant being this Term brought into Court in Custody of the Marshal, by a Rule thereof was remanded to the Custody of the said Marshal, to be by him kept in safe Custody until discharged, by due Course of Law. *Trinity* Term 1 *Geo.* 3. 1761. *K. B. MSS. The King v. Thomas Bonnel.*

Libeller of Lord and Lady Molland remanded to *K. B. Prison.*

The Defendant being brought into Court (as above) ordered to pay a Fine of 10*l.* and then to be discharged, which he was accordingly, paying the said Fine in Court. *Easter* Term 2 *Geo.* 3. 1762. *K. B. MSS. The King v. Charles Say.*

Publisher of Libel on Lord Clanricarde, finer.

The Defendant for publishing a Libel against the Right Honourable the Earl of *Clanricarde* of the Kingdom of *Ireland* in the *London Chronicle*, was sentenced to pay a Fine of 20*l.* to be imprisoned for the Space of three Months, and to give Security for his good Behaviour for the Space of two Years, himself in a

Another Publisher of same Libel,

finer,

imprisoned,

Security for good Behaviour.

(a) An Attachment of Contempt was granted against *Beardmore*, the Under-Sheriff, for not putting *Doctor Shebbeare* in and upon the Pillory; for which he was adjudged in Contempt, and in *Easter* Term following was fined 50*l.* and imprisoned in the *King's Bench* two Months. *Easter* Term 32 *Geo.* 2. 1759. *K. B. MSS. The King v. Beardmore.*

Recognizance

Recognizance of 200*l.* with two sufficient Sureties in 100*l.* (a) each. *Easter Term 2 Geo. 3. 1762. K. B. MSS. The King v. John Wilkie.*

Defendant with
Leave

paid Prosecutor
55*l.*

and was fined.

Blasphemy pu-
nished by Impri-
sonment, Pillory,
Confinement
in *Bridewell* to
hard Labour, and
Security for good
Behaviour for
Life.

Composer of
Libel on Lord
Orwell,

fined,
imprisoned,

Security for good
Behaviour.

The Defendant being brought into Court in Custody of the Marshal by Rule, and being convicted of printing and publishing a scandalous Libel on one Mr. *Kent*; and the said Defendant having, with the Leave and by the Recommendation of this Court, paid to the Prosecutor the Sum of 55*l.* for his Costs and Damages, and the said Prosecutor now here in Court, having declared his entire Satisfaction, It is ordered by this Court, in Consideration of such Satisfaction having been made, that he the said Defendant pay a Fine of only 6*s.* 8*d.* which was accordingly paid in Court. *Hilary Term 3 Geo. 3. K. B. MSS. The King v. Robert Browne.*

Peter Annet, convicted of Blasphemy, in writing against the Authority of the Sacred Writings, was sentenced by the Court of *King's Bench*, to suffer one Month's Imprisonment in *Newgate*; to stand twice in the Pillory (b), once at *Charing-Cross*, and once at the *Royal Exchange*; and then to be confined in (c) *Bridewell* to hard Labour for one (d) Year; and to find (e) Security for his good Behaviour during the Remainder of his Life. *Michaelmas Term 3 Geo. 3. 1763. K. B. 2 Burn's Eccles. Law. 781. The King v. Annet.*

The Defendant having been convicted of composing a defamatory Libel on Lord *Orwell*, was this Term brought into Court in Custody of the Marshal, and received the following Judgment, viz. to pay a Fine of 100*l.* to be imprisoned in the *King's Bench* for the Space of three Months, and at the Expiration of the said three Months, to give Security for his good Behaviour for the

(a) Mr. Justice *Wilmot* pronounced the Sentence of the Court. The Reason this Defendant's Punishment was so much more than the last, was because the Libel appeared in the *London Chronicle* originally, whereas Mr. *Say* only inadvertently copied it from that Paper, into the *Gazetteer*.

(b) The Rule adds; "with a Paper affixed over his Head with these Words," "FOR BLASPHEMY."

(c) The Rule says; "the House of Correction in *Clerkenwell*."

(d) The Rule adds; "and at the Expiration of the Year, to be remanded to *Newgate*, in Execution of the said Judgment."

(e) The Rule adds; "himself in 100*l.* and two sufficient Sureties in 50*l.* each; and to be fined 6*s.* 8*d.*"

N. B. The Defendant was imprisoned, pilloried, and paid his Fine, and gave Security according to the Directions of the above Rule, and was discharged out of Custody.

Space of seven Years, himself in 1000*l.* with two sufficient Sureties in 500*l.* each, and to be remanded in Execution of the Judgment. *Hilary Term 4 Geo. 3. 1764. K. B. MSS. The King v. Philip Thicknesse Esq;*

The Defendant was sentenced for publishing "*The North Briton*, Number XLV." to pay 100*l.* Fine, to be set in and upon the Pillory; to be imprisoned for the Space of six Months; to give Security for his good Behaviour for seven Years, himself in 500*l.* with two Sureties in 250*l.* each. *Hilary Term 5 Geo. 3. 1765. K. B. MSS. The King v. John Williams.*

The Defendant having been convicted of publishing "*The North Briton*, Number XLV." was the first Day of this Term brought up in order to receive the Sentence of the Court, when Lord Chief Justice Mansfield admitted that the Secretary of State's Promise to the Defendant, "*that if he would give up the (a) Author, he should not be prosecuted,*" was greatly in his Favour, and his Lordship recommended the Attorney (b) General, through the Secretaries of State, to lay the Defendant's Case before His Majesty, which the Attorney (the next Day) informing the Court he had done, and that it was His Majesty's Pleasure that the Defendant should be immediately discharged, he was discharged accordingly. *Hilary Term 5 Geo. 3. 1765. K. B. MSS. The King v. George Kearley.*

The Defendant having been convicted of printing and publishing an infamous and seditious Libel, intituled, "*The North Briton*, Number XLV." in Volumes, was this Term outlawed. *Michaelmas Term 5 Geo. 3. 1764. K. B. MSS. The King v. John Wilkes Esq;*

(a) See Chap. II. fol. 23. in Notes; and Doctor Middleton's Case, chap. 28.

(b) Sir Fletcher Norton. *Whitw. List.* 167.

C H A P. XXVII.

Consequence of Punishment.

Pillory made
Crimes *falsi*.

Anciently no
Man pilloried
could be a Wit-
ness.

The Rigour of
the Law now re-
duced to Reason.

The Crime and
not the Punish-
ment makes a
Man infamous.

Pillory for a Li-
bel or seditious
Words does not
make Party
infamous.

THE common Punishment that makes the *Crimes falsi*, is being set on the Pillory; and therefore anciently they held the Law to be, that no Man legally set on the Pillory, could be a Witness, for they thought it a ridiculous Thing, and boding ill to a Cause, when a Person thus stigmatized appeared in Court to attest any Thing. *Co. Lit.* 66. 3 *Inst.* 219. But the Rigour of this Piece of Law, (according to the late Lord Chief Baron Gilbert, and one of the present Judges) is reduced to Reason; for now it is held, that unless a Man be put in the Pillory *pro Crimine falsi*, as for Perjury, Forgery, or the like, it is no Blemish to his Attestation; it is the Crime and not the Punishment that makes a Man infamous; for a Man may be pilloried for speaking loose and scandalous Words of the Government, which yet, in doubtful and factious Times, ought not to be taken as a Presumption against his common Credibility. If a Judge should sentence a Man to stand in the Pillory for a Libel or seditious Words, and he should so stand, yet this would not make him infamous to such a Degree as never after to be admitted a Witness, for the Crime but is rather exorbitant in Point of Rashness and Misbehaviour, than of Guilt. *Gilb. Evid.* 145. *Theo. Evid.* 107. *Fortesc. Rep.* 209. 5 *Mod.* 15, 74. 3 *Lev.* 426. *Tri. per Pais.* 345. 12 *Vin. Abr.* 28. pl. 9. *Skin.* 578, 579.

C H A P. XXVIII.

Attachments of Contempt.

Commitment
for a Contempt.

ONE may be committed for a Contempt done to a Court of Justice, but the Matter of the Contempt must be certain, and not doubtful; for else the Party may perchance be wrongfully committed, which the Court will be cautious not to do. *Lil. Abr.* 427.

If one brought in in Contempt, denies all upon Oath, he is of Course discharged of the Contempt; but if he has forsworn himself, he may be prosecuted for Perjury. 12 Mod. 348, 511. *Comb. 63.*

Upon a Motion for an Attachment against the Defendant for publishing a Libel on the Court of *King's Bench*, and a Rule made upon him to shew cause why it should not be granted, it was moved to discharge that Rule upon an Affidavit, that his Fault was not wilful, but merely through ignorance; that he had the Libel from one C. a Printer in C. that it was in *Latin*, which he did not understand, and that he did not know who was the Author, otherwise than by a Letter he received from the Printer, and which was now annexed to his Affidavit; by which Letter it appeared, that one Doctor *Middleton* was the Author; so that having shewed how he came by this Letter, and having told all that he knew of the Author, for that reason it was insisted in his Behalf, that the Rule should be discharged, and that the Printer should be prosecuted; but the Rule was continued on the Defendant, until he made out his Allegation against the Printer, who was therefore joined in the Rule, that both of them might be before the Court. In the next Term Doctor *Middleton* appeared, and (a) confessed in Court that he was the Author of the Book; and thereupon the Rule was discharged against the Defendant and the Printer. *Easter Term 9 Geo. 1724. 8 Mod. 123. 15 Vin. Abr. 90. pl. 3. The King v. Wiatt.*

Motion for an Attachment against the Defendant for writing a Libel against a Doctor of Divinity in the University of *Cambridge*; the Libel was contained in his Preface to a *Latin* Book about the Library of the University, dedicated to Dr. *Snape*, then Vice-Chancellor; he came into Court voluntarily, and confessed that he was the Author, and it was so recorded. *Trinity Term 9 Geo. 1724. K. B. Fortesc. Rep. 201. The King v. Doctor Middleton.*

On Rule to shew Cause, why an Attachment should not be granted against one *Elizabeth Mayer* and one *Dowling*, for publishing a Libel upon the Proceedings of the Court in a late Trial

Denial upon Oath discharged of Contempt.
Publisher discovering the Author, no cause for Rule *Nisi* for an Attachment of Contempt being discharged.
Attachment of Contempt granted for writing a Libel against a Doctor of Divinity at *Cambridge*.
How far the Court will grant an Attachment for publishing Reflections on it's Proceedings.

(a) My Lord *Fortescue* says, this was an honourable Action in Doctor *Middleton*; for the first Motion was made against the Bookseller for publishing the Book as above, but he was excused on his getting the Doctor to confess that he was the Author. *Fortesc. Rep. 201.*

of Lady *Lawley*, Mr. *Marsh* said, that he was Counsel only for Mrs. *Mayer*, but he hoped, the Rule should not be made absolute against her. He said Mrs. *Mayer*'s Husband kept a Pamphlet Shop, and one Day in his Absence Mr. *Vaughan* came and asked her, whether she had Lady *Lawley*'s Trial; the Woman did not know it was in the Shop; but upon looking into a Drawer of Papers she found it. He said, that he had an Affidavit to produce, that she knew nothing of the Contents. Mr. *Vaughan* would willingly have bought it of her; she refused to sell it him; but told him he might read it, which he accordingly did. The Court said, that it was beyond all Question, that Attachments have been granted in these Cases; and particularly mentioned Dr. *Middleton*'s Case, where it was so done. The Chief Justice said likewise, that he thought it was not material whether Mrs. *Mayer* knew of the Purport of this Writing or not. However the Court in general agreed to discharge the Rule as to her; because there did not appear to be any Publication by her. They said likewise, that they could not make the Rule absolute as to *Dowling*; because there was no Affidavit of Service. *Michaelmas Term 5 Geo. 2. 1732. 2 Barnard. K. B. 43. Anon.*

Rule *Nisi* cannot be made absolute without Affidavit of Service.

The remarkable Contempt of the Court of Common Pleas, in the Person of the late Lord Chief Justice *Willes*.

Lieutenant *Frye* recovered 1000*l.* Damages against Sir *Chaloner Ogle*, for the Sentence of a Court Martial, in the *East-Indies*. Writ sued out of Common Pleas. President of the Court Martial arrested.

When a most worthy and upright Judge, who has always shewn the most sacred regard to the Laws of his Country, has been grossly and publicly reflected upon, it becomes a national Affair: And, though the Recantation and Submission, besides being recorded in the Remembrance Office, has been published in the *London Gazette*, the Public have a right to know (what is there omitted) how very slight the Occasion was; it was thus: Lieutenant *Frye*, in February 1745-6, recovered 1000*l.* Damages against Sir *Chaloner Ogle* for the Sentence pass'd against him by a Court Martial, in the *West-Indies*, whereof Sir *Chaloner* was President, and was at Liberty to bring his Action against every Member of the said Court. Accordingly he took out a Writ from the Court of *Common Pleas*, and Rear-Admiral *Mayne*, President of the Court Martial, which sat daily at *Deptford*, was arrested May the 15th coming from the Court, on which the Court Martial, the next Day, came to the following hasty Resolutions.

1*st.* Resolution. Indignity to every Court of Judicature in the Kingdom.

1. That it appears the highest Indignity offered to the Court, and through this Court to every other Court of Judicature, that is

or may hereafter be formed in this Kingdom, and the highest infraction of the Prerogative of the Lord High Admiral, and of the Statute Law of this Realm, to arrest or serve any Writ of *Capias* upon the President, or any Member of this Court now sitting, or of any other Court Martial; and therefore the Court unanimously resolve to desist farther proceeding on this Trial, till Satisfaction be made for this high Insult.

2. That this Court make Representation by Letter to the Lord High Admiral, of the high Infringment made on his Prerogative, by arresting the President of this Court duly assembled, by virtue of his Authority; and that the Court do adjourn till *Thursday* Morning *nine* o'Clock, to give time for every Member to deliberate upon proper Methods for obtaining Satisfaction for the high Insult on their President, from all Persons, *how high soever in Rank or Office*, who have set on Foot this Arrest, or in any degree promoted or advised it.

These Resolutions were inclosed in a Letter, and delivered by the Judge Advocate to the Lords of the Admiralty, who laid them before his Majesty: And a Letter from Mr. *Corbet*, Secretary to the Admiralty, and one from the Duke of *Newcastle*, to the Commissioners of the Admiralty, so pacified the Court Martial, that they thought fit to proceed on the Trials, but not before they had sent the following Answer to Mr. *Corbet's* Letter, signed by the President and Members of the Court Martial, which occasioned the Submission herein after mentioned.

S I R,

We desire you would be pleased to inform their Lordships, that, having heard their Lordships Letter read to us, as well as the authentic Copy of the Letter to their Lordships from His Majesty's principal Secretary of State, the Duke of *Newcastle*, signifying His Majesty's Royal Assurance of his most gracious Protection, for procuring to us a sufficient Satisfaction for the late Indignity offered to us, and that proper Methods will be taken for preventing any thing of the like Nature for the Future, according to their Lordships Desire, we are unanimously agreed to proceed upon the Business of the Trials, but think it incumbent upon us to give their Lordships our Reasons for the Steps we have already taken, submitting them to their Lordships farther

Con-

dangerous Con-
sequence to Se-
curity of the Na-
tion.

Consideration, as this Attack appears to us of the most dangerous Consequence to the Security of the Nation, the Authority of the Lord High Admiral, the Privilege of the Honourable *House of Commons* in Parliament assembled, and the Prerogative of the Crown.

Lord Chief Jus-
tice *Willes* no
Regard to His
Majesty's Ho-
nour and Safety,
the Security of
the Subjects Li-
berty and Prop-
erty, Support of
Constitution or
Defence of Do-
minions;
contrary to his
Duty and Trust,
in Violation of
the Statute Law,
and of Usage
and Custom,
in defiance of
His Majesty's
Command

did issue his Writ

to arrest

Members of the
Court Martial,

by which craft
and subtle Device
he did disturb the
Laws of the
Land,

preventing the
Execution of Ju-
stice, and elude
His Majesty's
Commands.
Notice to appear
artfully added.

First, it appears to us, that Sir *John Willes*, Knt. Lord Chief Justice of the *Common Pleas*, having no regard to the Honour and Safety of His Majesty, the Security of the Liberties and Properties of his Subjects, the Support of the Constitution, or Defence of his Dominions, in time of actual War with two powerful Nations, favoured, aided and abetted by Rebellion at Home, contrary to his Duty and Trust, and in Violation of the Statute Laws of the Realm, as well as those established by Use and Custom, Time immemorial, by which His Majesty's Arms by Sea have been prudently, wisely and effectually governed, to the great Glory of His Majesty, and Protection of his Subjects; as well as in open Defiance of His Majesty's Commands, in consequence of an Address from the Honourable *House of Commons* in Parliament assembled, the said Lord Chief Justice *Willes* did issue his Writ, on the 12th Day of May, in the 19th Year of His present Majesty's Reign, to (a) arrest, seize and secure the Persons of *Perry Mayne*, Esq; and *James Bentone*, Esq; Members constituent, and Judges of the Court Martial then sitting, by Orders of the Lords Commissioners for executing the Office of Lord High Admiral of *Great Britain*, and by virtue of the Power to them given by the Stat. of 13 Car. 2. c. 9. the said Judges being duly qualified as the Act requires; and did cause the said Writ to be (a) served on the said *Perry Mayne*, Esq; by which craft and subtle Device, as far as in him layeth, he did let, respite and disturb the Laws of the Land, and by forcibly taking away Judges, prevent the Execution of Justice, and elude the Commands of His Majesty, grounded upon the Address of the Honourable *House of Commons* in Parliament assembled; and though in a Clause subjoined to the said Writ, it was artfully added, that the President is served with this Process, to the Intent that he may, by his Attorney, appear in his Majesty's Court of *Common Pleas*, it ap-

(a) The Absurdity occasioned by the Court Martial's confounding an Arrest with a mere Service of Process is too obvious to need other Notice.

pears

pears to us that this Evasion is only provided to the Intent that we might possibly, through Oversight, proceed in our judicial Capacity; and that by some reserved Device, as well our general Proceedings as our final Determination and Sentence, might be interpreted and declared invalid, void, and of none Effect, to the entire defeating of this solemn, grand, and national Enquiry.

with Intent to invalidate the Sentence of the Court Martial,

and defeat national Inquiry.

Secondly, That the Grounds for this Writ was an Action recommended by the said Lord Chief Justice in open Court, for Damages against the said *Perry Mayne* Esquire, and *James Rentone* Esq; for the Sentence of a Court Martial legally held, by Virtue of the Statute Laws of this Realm at *Jamaica*, of which Court the said *Perry Mayne* Esq; and *James Rentone* Esq; were Members, Constituents, or Judges, properly qualified as such by the known Laws of the Realm, as well Statutes as Use and Custom.

Action recommended by the Lord Chief Justice in open Court.

Thirdly, That in Consequence of the said Breach and Violation of the Laws of the Kingdom, as well as Insult to a supreme Court of Judicature, sitting to determine in the derniere Resort, which by its Constitution, never acknowledged any superior Court, nor any Appeal from its Sentence, but to His Majesty's Prerogative, as far as in him layeth, the whole Order, Discipline and Government of His Majesty's Armies by Sea is entirely and absolutely dissolved, and the Statute of 13 Car. 2. c. 9. made null and void; by which most wicked Device, the Honour of His Majesty is betray'd, the Security of His Subjects is exposed, and the fundamental Laws of the Constitution subverted.

Laws of the Kingdom violated, supreme Court of Judicature insulted, sitting in derniere Resort, acknowledges no superior, nor any Appeal except to the Prerogative.

His Majesty's Honour betray'd, Security of the Subjects exposed, and the Laws subverted.

The following Paper, sign'd by Admiral Mayne, Admiral Byng, and the several Commanders whose Names are subscribed thereto, was sent by them to the Right Honourable Sir John Willes, Knt. Lord Chief Justice of His Majesty's Court of Common Pleas.

The Court Martial's Submission and Recantation to the Chief Justice.

Lond. Gaz. Nov. 15.

A S nothing is more becoming a Gentleman, than to acknowledge himself to be in the wrong, as soon as he is sensible he is so, and to be ready to make Satisfaction to any Person he has injured; We therefore, whose Names are underwritten, being thoroughly convinced, That we were entirely mistaken in the Opinion we had conceived of the Lord Chief Justice *Willes*, think ourselves obliged, in Honour as well as Justice, to make him Satisfaction

Court Martial mistaken in their Opinion of Lord Ch. Just. *Willes*, bound in Honour and Justice to make him Satisfaction.

Injury public.

Declaration that
the Reflections
cast on him were
unjust, and with-
out Foundation.

tisfaction as far as it is in our Power. And as the Injury we did him was of a public Nature, we in this public Manner declare, That we are now satisfied the Reflections cast upon him in our Resolutions of the 16th and 21st of May last, were unjust, unwarrantable, and without any Foundation whatsoever; and do ask Pardon of his Lordship, and the Court of *Common Pleas*, for the Indignity offer'd both to him and the Court.

Nov. 10. 1746.

P. Mayne,	C. Molloy,
J. (a) Byng,	Smith Callis,
E. Legge,	R. Erskine,
Ja. Rentone,	J. Pittman,
Thos. Frankland,	Char. Catford,
Chas. Colby,	Tho. Hamway,
J. Hamilton,	E. Spragge,
Sheldrake Laton,	John Orme.
Jos. Hamar.	

When this Recantation was presented to the Lord Chief Justice, he spoke to the following Effect.

The Chief Justice
his Speech on
that Occasion.Recantation and
Submission to be
registred.

Although the Injury I have received might have required a private (b) Satisfaction, yet as the Offence was of a public Nature, and offer'd to the whole Court of *Common Pleas*, as well as myself, I thought it more consistent with my Character, and the Dignity of the Post I have the Honour to fill, to have Satisfaction in this public Manner; and desire, with the Concurrence of my Brothers, that it may be registred in the Remembrance Office, as a Memorial to the present and future Ages, that whoever is above the Law, will in the End find themselves mistaken; for we may with Propriety say of the Law, as of Truth, *Magna est, & præ-valebit.*

(a) This unhappy Gentleman was remarkable for *Error in Judgment*. See his Trial.

(b) It is said the Chief Justice determined to bring an Action against every Member of the Court Martial for the above Resolutions, and for that Purpose had himself drawn a Declaration, wherein he laid his Damages to 20,000*l.* and that it was with the utmost Difficulty that the first Interest of the Kingdom could prevail on his Lordship to drop the Prosecution.

Rule

Rule (a) *Nisi*, &c. for an Attachment of Contempt against the Defendant for censuring the Opinion of the Court of *Common Pleas* on their discharging Mr. (b) *Wilkes*; the Libel was published in a periodical Paper, intituled, *The Moderator*. *Michaelmas Term 4 Geo. 3. 1764. C. P. MSS. The King v. John Wilkie.*

Attachment
Nisi, &c. for
publishing *The*
Moderator.

Rule *Nisi* for an Attachment of Contempt was granted last *Hilary Term* against the Defendant for publishing a Libel on the Lord Chief Justice of the Court of *King's Bench*, in a certain Pamphlet, intituled, "A Letter concerning Libels, Warrants, the Seizure of Papers, and Sureties for the Peace, or Behaviour, &c." and this Term the Defendant shewed Cause.

Attachment
Nisi for libelling
L. C. J. K. B.

Cause shewn.

The Arguments of the Defendant's Counsel were to the following Effect, *viz.*

Arguments of
Defendant's
Counsel.

They observed that the Application was for an Attachment of Contempt against the Defendant for publishing a Pamphlet wherein were contained some Reflections on the President of this Court. Their Arguments were divided into two Parts, *viz.*

Application for
reflecting on the
Chief Justice.

Argument's divided.

First, They contended that the Pamphlet did not at all suit the Party alluded to, and

Reflections not
suitable to Party.

Secondly, That supposing the Pamphlet to be a Reflection on the Party alluded to, yet that an Attachment was an improper Mode of proceeding in this Case.

Attachment im-
proper.

In support of the first Proposition, the Defendant's Counsel observed, that it appeared from the Affidavits on Behalf of the Prosecution that the Facts were not as stated in the Pamphlet; if so, there was an End of the Cause for the particular Mode of proceeding contended for.

Prosecutor's own
Affidavits,

Cause for not
granting the
Writ.

That it was impossible that the Character drawn in the Pamphlet could be the Portrait of any Original, it deviated so far from the Likeness of any Chief Justice, particularly the present one of the Court of *King's Bench*.

Character drawn,
Portrait of no
Original.

(a) Note; The Rule was never made absolute.

(b) See the Resolution of the Court delivered by Ch. Just. Pratt, in Chap. 16.

T

That

An argumentative Answer only.

That it was only an Answer by way of Argument to another Pamphlet, that had advanced Tenets not altogether agreeable to the Notions of the Author of the "Letter, &c."

Second Head.
L. C. J. of K. B.
has several Methods of obtaining Justice;
Member of an illustrious Body,

As to the second Head they observed, that if the Chief President of this Court was alluded to, he had several Methods to do himself Justice, without taking this unconstitutional one; he was a Member of a most illustrious Body who would never suffer the slightest Reflection on the Character of any of their Members to pass unnoticed or uncensured; that as a Peer of the Realm he was intitled to his Action of *Scandalum Magnatum*, wherein he need not fear but that a *Jury* would give him a proper Satisfaction for any Injury he should *prove* to them he had received, they would consider all the eminent Characters and Offices he held in Life, and the Consequence it must be to the Execution of the Justice of the Kingdom to protect such Characters against Melevolence and Detraction.

intitled to his Action of *Scandalum Magnatum*.
Jury would satisfy him for Injury proved to be received.

Original Institution of Process of Contempt, to enforce Obedience, founded in Necessity,

That an Attachment, the Process of Contempt, was originally instituted for the Benefit of the Subject; it was established to enforce Obedience to the Commands of the Courts of Justice; it was founded in Necessity, for if the Courts of Justice were not possessed of such a Power, their Proceedings would be vague and nugatory, and therefore as the Case before them was not attended with any of the peculiar Circumstances necessary to support an Application of this Sort, it would be too much for the Court to extend it beyond it's original Limits.

Attachments not to be extended.

Practice on Informations.

That even the Practice for granting Informations, which went a great Way, would be nothing if the present Motion were granted.

Method to apply for Information,

The Method to apply for an Information is this, the Party who conceives himself injured annexes the Paper in which he thinks himself alluded to, to his own Affidavit wherein he swears that he believes the Writer, Printer or Publisher (as the Case may happen to be) intended to reflect on him this Deponent; whereupon the Court grants the Information, but the Defendant is afterwards tried, and the Fact proved to the Satisfaction of a Jury, but in this Case if the Attachment goes, the Court exercises the distinct and peculiar Provinces of Party, Judge, Evidence and Jury.

Defendant afterwards tried by a Jury,

Court Party, Judge, Evidence and Jury.

No Contempt to disobey Orders at *Nisi Prius*, *Old Bailey*, or at Chambers till made Rules of Court.

They observed that it was no Contempt to disobey the Order of a Judge made at *Nisi Prius*, at the *Old Bailey*, or at Chambers, till made Rules of Court, which was generally done of

Course

Course from the Respect the Court paid to the Persons who made such Orders; however, as the Order in Question never was made a Rule of Court, it was no Contempt, or at least such a Contempt as the Court would punish the Censure or Disobedience of, by Attachment.

They instanced the late Lord Ferrer's Case, in which an *Habeas Corpus* had issued in the Vacation to bring his Countess before a Judge, which the Earl not doing, a Motion was made the ensuing Term for an Attachment for a Contempt in not obeying the Writ; but the Court was of Opinion it was no Contempt of the Court, the Writ not having issued by Virtue of a Rule of the Court, and the Motion was denied, and a Rule granted for another *Habeas Corpus*.

Lord Ferrer's Case,

no Contempt not to obey an *Hab. Corp.* issued in Vacation Time.

Another Case was a Motion for an Attachment against the Publisher of "The Moderator," in which Lord Chief Justice Pratt's Determination for discharging Mr. Wilkes from his Commitment was called *precipitate*, and *inconsiderate*, *injudicious*, and *erroneous*, yet the Rule was never made absolute.

Lord Chief Justice Pratt's Case.

His Lordship's Determination censured, yet Rule *Nisi* for an Attachment never made absolute.

The Judges have taken Time to deliver their Opinions on this Matter. *Easter Term 5 Geo. 3. 1765. MSS. The King v. Almon.*

Judges take Time to deliver their Opinions.

F I N I S.



ERRATA.

Page	Line	
4	21	add <i>Popb.</i> 140.
8	8	for <i>Chap.</i> 9. read <i>Chap.</i> 11.
15	32	after <i>Judgment</i> add a <i>Period.</i>
16	8	after <i>Coolness</i> dele the <i>Stop.</i>
—	—	after <i>Deliberation</i> add a <i>Comma</i> , which gives, &c.
23	in Notes	for <i>Chap.</i> 26. read <i>Chap.</i> 28.
24	11	for <i>of</i> read <i>off.</i>
—	Note (b)	for 16 read 169.
42	6	dele <i>Fines.</i>
—	11	for <i>Chap.</i> 27. read <i>Chap.</i> 28.
46	in Note	for <i>Chap.</i> 27. read <i>Chap.</i> 26.
52	15	for <i>Law</i> read <i>Evidence.</i>
61	in Note	for <i>Chap.</i> 9. read <i>Chap.</i> 11. fol. 24.
72	Note (a)	for 7 8 & read 7 & 8
93	12	for <i>W.</i> read <i>W.</i> 3.
109	4, 13	for 3 <i>Rush</i> , &c. read 2 <i>Rush</i> , &c.
130	19	dele <i>but.</i>